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Senate

(Legislative day of Monday, July 10, 1995)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, Sovereign of this Nation and personal Lord of our lives, we praise You for our accountability to You. You are a God of judgment as well as grace. If You did not care, life would have no meaning. We thank You that You have given us the basis on which we will be judged each hour, and at the end of each day. You want us to know what is required of us so we can pass Your daily examination with flying colors.

Your commandments are in force as much now as when You gave them to Moses. We also know that You require us to do justly, love mercy, and walk humbly with You, attentively receptive to Your guidance. Integrity, honesty, faithfulness have not gone out of style; nor has absolute trust in You ceased to be the secret for personal peace and the basis of great leadership. Help us to live our Nation's motto, ''in God we trust'' and judge us by the extent we have put our trust in You for guidance in making our decisions.

Gracious God, as we receive Your judgment, we also seek Your forgiveness and a new beginning. So may Your forgiveness give us the courage to seek first Your rule and righteousness. In Your holy name. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader is recognized.

SCHEDULE

Mr. THOMAS. Mr. President, this morning the leader time has been reserved, and there will be a period for morning business until the hour of 10:45. At 10:45, the Senate will resume consideration of S. 343, the regulatory reform bill. Rollcall votes can be expected throughout today's session of the Senate.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10:45 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

Under the previous order, the Senator from Wyoming [Mr. THOMAS] will be recognized to speak for up to 25 minutes.

FRESHMAN FOCUS

Mr. THOMAS. Mr. President, the 25 minutes has been reserved for Members of the freshman focus group, as we continue our effort to seek to focus some of the issues as they appear to those of us who are new to the Senate this year, who recently completed an election, who, I think, in some instances have a unique view of what we are doing or seeking to do here in the U.S. Senate. So I would like to take a few minutes. I will be joined by other Members.

Mr. President, I would like to talk just a little bit this morning about process. I admit to not knowing the rules of this place like some do. I seek to know them. I think I do understand that there is a difference between the U.S. Senate and the U.S. House and that they were designed to be different. This is a deliberative body. The rules are different, which provide for additional discussion and debate, and I understand that, and I think that is proper, certainly.

But, you know, we did not come here to procrastinate. We did not come here to extend debate for the purpose of extending debate. We came here for the purpose of thoroughly examining the issues that are before us, looking at the alternatives, and seeking, then, I think, to find some solutions. And that is what voting is all about. If you do not have enough votes, you lose. If you have enough votes, you win. And you go on to something else.

Mr. President, it seems to me it has become routine in this session of the Congress to extend, to amend, and to debate and, frankly, to stall. We have seen a great deal of that. Whether it is unfunded mandates, whether it is line-item veto, whether it is balanced budget amendment, whether it is telecommunications, whether it is product liability, we find this interminable number of amendments, many of which have already been done.

Yesterday was a good example. We had extended debate over an issue that had already, I think in almost anyone's mind, been resolved. But we went on. We now will have had 4 days of debate. This is an important issue. But everyone rises in the beginning and says: I want regulatory reform, but—but—but we want to do it in the right way. The right way is a pretty subjective kind of thing. What is right to you is not necessarily right to me.

So I guess I am expressing a certain amount of frustration, in that it seems to me we have accomplished a considerable amount in the Senate, but we have an awful lot before us. We have an opportunity in August to be home in our districts to talk to people about the direction this country ought to take, to talk to people about specific items. Frankly, that time in August is being constricted. I think it is almost certain we will not be available to go

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

home as early as we thought we would. We have a lot of things to do. We have not even gotten to the budget—which, by the way, I think we ought to do every 2 years instead of 1. But, nevertheless, that is another issue.

So we have a great deal to do, a great many things. Welfare reform—we have not even talked about that. The items that have been very high on the agenda of the American people we have not gotten to.

So I guess I am expressing my frustration about the system. I urge my colleagues to take some self-analysis. Certainly, everyone is entitled to talk. Everyone is entitled to have an amendment. Everyone is entitled to have a view. But they are not entitled to stall the progress. They are not entitled to say we want more amendments, and when the time comes for amendments there are none to be talked about.

The elections we had—every election, but more particularly the last election—was about change. It was about doing something; about making things different than they are. Almost everybody agrees to that. Everybody stands up and says we are for change, and then resists change. I understand there is a philosophical difference, and properly there can be. There are those who do not want to change. I understand that. There are those who support the status quo, and I understand that. I do not object to that. I do not object to disagreement. I do not object to argument. But I do object to the fact that we never come to a decision, and that is what it should be all about.

I think there is a message: The status quo is not good enough. That is clear. No one says there should not be regulations. Of course, there should be regulations. Of course, it should not be changed to where we do not have clean air and clean water, and that is not the purpose of this. Of course, we ought not to do things that threaten health. Clearly this does not do that. This bill is a procedural bill that takes into account some processes in arriving at the implementation of regulations. That is what it is about. We have said specifically it is a supplement. It does not supersede the issues. But that does not seem to be good enough. We continue to rehash and go over that. I am expressing a little frustration, Mr. President.

In any event, we do need meaningful change. There is no question but what we are overregulated. There is no question but what the process of giving a grazing lease in Wyoming—that now requires a NEPA environmental impact study as if it were a national environmental change. It is a renewal of a 50-year-old process that has been going on.

Those are the kinds of things that we need to change. The law provides for multiple use of the land. But you cannot get on the land because the regulation, as it is implemented, is so costly that doing archaeological surveys and those kinds of things we are looking for is not a process that allows regulations to be implemented in a commonsense kind of a way.

Mr. President, I hope we can move forward. I hope we can move forward on this issue. Frankly, it affects everyone. We think it affects us in the West a little more where 50 percent of the land is owned by the Federal Government. So that anything you do in the Federal Government, if it has to do with recreation or has to do with hunting or has to do with grazing or has to do with mineral production, has to go through this extensive regulatory process. That needs to be changed. I do not think there is a soul who would say, ''Oh, no. It does not need to be changed.''

Take a look at what we have done in 3 days. We say it needs to be changed. But there are 32 amendments or so sitting out there, many of which have already been dealt with which have nothing to do with creating a strong bill but have more to do with simply moving back the time when we make decisions.

So, Mr. President, I hope we do move forward. I hope we can deal with issues as they are before us and come to some closure, come to some resolution. That is why we are here. That is why we came here. We are trustees. We are trustees for the voters, we are trustees for the citizens, and they are the beneficiaries. They should expect something from us. That is our opportunity.

Mr. President, I yield the floor.

Mr. FRIST addressed the Chair.

The PRESIDING OFFICER (Mr. ASHCROFT). The Senator from Tennessee is recognized.

COMPREHENSIVE REGULATORY REFORM ACT

Mr. FRIST. Mr. President, I rise today to continue discussions on the Comprehensive Regulatory Reform Act of 1995.

Mr. President, in an effort to protect the American consumer and taxpayer from pollution, faulty products, contaminants, unfair business practices and threats to their livelihood and health, our Government has in fact buried us under a mountain of Federal redtape and regulation that far exceeds any recognizable benefit. As a result, the American economy stagnates and the American public continues to be subjected to the ever-increasing presence of the Federal Government in our business practices and in our daily lives.

It is ironic that in an effort to protect the American people and the American industry the Federal Government has become an impediment. The greatest challenges to American industry and businesses do not come from dwindling natural resources or from competition from Europe and Japan, or from any number of social and economic challenges facing our society and culture today. Arguably, the greatest challenges facing American businesses and industries and the Americans who depend on them are the burdens placed on them by their own Federal Government; a Government that may or may not always have the best intentions but whose sole purpose is to protect and promote the common good, not to suffocate or stymie its citizens' and industries' well-intentioned and lawful pursuits. The need for substantial and fundamental regulatory reform cannot be overstated.

As we have heard in the last 3 days, the cost of regulation in this country now exceeds $560 billion every year. It is growing rapidly. And it is the rate of this growth which, like that of the national debt, that is so disturbing—growth, unfortunately, that produces no corresponding rise in benefits to either the economy or the American people.

Mr. President, we have now reached the point where the cost of supposedly protecting ourselves, our businesses and our industries from ourselves now more than doubles the dollar value that we spend on defending our Nation from foreign enemies. Part of the fault is our own. In the past Congress has failed to control the regulating agencies that fall under its jurisdiction. Congress has failed to scrutinize the expense of a regulation as closely as we have included such items in the budget. Congress has failed to consider the cost of regulation to the economy.

But just as we are fixing today our budget problems, we can reduce our regulatory burden if we have the will to do so. I believe the legislation before us is a positive, necessary and long overdue step in that direction.

Mr. President, the regulatory machine in our Government is out of control. Regulating agencies have become something akin to nonelected lawmakers, and almost predatory in nature when dealing with many industries and businesses. These agencies refuse to follow even the simplest of commonsense guidelines requiring validation of their actions for the common good, and that benefits realized from their actions outweigh the costs incurred.

Where was this simple American principle lost on the Federal Government? These are the principles which American citizens follow in their everyday lives, and it should not be difficult or unreasonable for the Government to operate that way also. The arrogance and the paternalism that has typified too much of the rulemaking in this country must end. People are tired of it.

The provisions of this bill are based on the commonsense principles that guide a free market economy in a democracy. These are the very same principles that played a critical role in building the America we know today. At the centerpiece of this legislation is cost-benefit analysis. In simple terms, it dictates that before a new regulation

can be implemented it must be determined to be more beneficial to the public good than it will cost the economy.

While cost-benefit analysis has been used in the determination of new rules before, it clearly has not been the guiding principle. This bill dictates that it must now be the centerpiece of the formulation of any new rule and the basis for its justification or its dismissal.

This legislation also establishes—or reestablishes—that regulating agencies prioritize their formulation of new rules. Simply stated, that means the greatest dangers to the public must be addressed first and must be dealt with in the most cost-effective way.

The Government should no longer be allowed to saddle the economy with a supposed protective measure that clearly does not justify the cost it incurs.

With the inclusion of standardized risk assessment guidelines and decisional criteria, this legislation is designed to prevent extensive promulgation of excessive rules from occurring again as it has in the past.

Mr. President, one of the most encouraging and commonsense provisions of this legislation is that it compels the Federal Government to use market-based alternatives rather than proscriptive brute force regulation. Such measures have thus far proven to be extremely effective. They are also less costly, and they are fair.

One of the most common complaints I hear from businesses, both large and small, is the unnecessarily strict and archaic nature of the Delaney clause, or the rule that says even very small traces, trace elements of materials deemed unhealthy prohibit a company from offering that product to the public. The problem is that technology today has progressed far enough and so rapidly from the time the Delaney clause was first introduced that we can now detect these trace elements of substances that simply could never have been detected before and at levels that cannot be reasonably argued to be detrimental to ones health. However, the law has not changed to fit that reality. Such an inflexibility does not have the best interests of the public in mind. This legislation will in large part remedy that problem, and not a minute too soon.

This bill reinforces what this body passed earlier this year in the form of the congressional review, S. 219, of any new major rules. This provision will ultimately allow elected lawmakers—not regulatory agency bureaucrats—to decide if the new rule is in the best interest of the public before rules are applied. And perhaps the most encouraging provision of this legislation is the explicit instruction it includes to minimize the impact on small businesses when formulating and applying rules.

Mr. President, it is high time we reapply this simple set of principles by which the economy and society function to the way our Government works. It is time to hold the Government accountable to the same standards which the public must meet every day. It is unfortunate, if not ludicrous, that it would be any other way, and it is no wonder that the American electorate is restless and upset with their Government.

During the course of this debate, we have heard many examples, both telling and anecdotal. These examples remind us exactly how unprincipled and how out of control our Government can sometimes be. Some of the instances of the regulatory machine run amok are almost unbelievable in their egregious violation of common sense and individual rights. But the one fact that must be kept in mind is that our Government operates in such a way that the common good is no longer the goal. Regulation has become a goal in and of itself. Not only is that dangerous, it is unfair and extraordinarily expensive—almost $600 billion a year.

This legislation should be viewed as nothing short of a necessary complement to what we are striving to accomplish in balancing our budget. Indeed, this legislation could be viewed as the opportunity to give the American public the biggest tax cut in its history without so much as increasing the deficit or reducing benefits by a single cent.

We would be remiss in our duties as popularly elected officials if we failed in this opportunity by failing to pass this important legislation or by passing it in a form so watered down as to hardly check the regulatory machine at all. I strongly urge my colleagues not to miss this opportunity and not to let special interests or partisan concerns guide our upcoming votes.

Thank you, Mr. President. I yield the floor.

Mr. INHOFE addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

REGULATORY REFORM COST-BENEFIT LANGUAGE

Mr. INHOFE. Mr. President, the Senator from Tennessee at the conclusion of his remarks started talking about something that is very, very significant and has been left out of this debate. I have a few comments to make, and then I wish to follow up on that. And that is the budget ramifications of an overregulated society.

I am an original cosponsor of the Dole bill. However, I will say that I do not believe the bill goes far enough. I would like to have it stronger. It does not include a supermandate which would make the new cost-benefit provisions apply to all regulations. It specifically exempts those statutes which set a lesser standard in the statutory language. These exempted laws include many of the environmental statutes such as the Clean Air Act, which really does need a strong cost-benefit provision.

Half of all regulations issued are from the EPA, and half of all the EPA regulations are under the Clean Air Act. So that is why that act is so significant. We need to protect human health, but the EPA has gone way too far.

At the time of the Clean Air Act, the head of the Department of Health and Human Services told the Office of Management and Budget that they had no issues with the air bill. The only health benefit, according to HHS, was removing benzene from gas. This is the head of the public health department saying the bill was not protecting health.

When EPA determines risk in their risk assessments they use something called the maximum exposed individual, which is a person who spends every day of their life, 24 hours a day for 70 years, underneath the factory vent breathing the discharges. And I do not know anybody like that. That is totally unreasonable.

They also use the maximum tolerated dose for rats, which is when they stuff so much of the substance that they are studying into a rat the rat is going to die from stress.

For part of the Clean Air Act, they also observed the effects of emissions on asthma patients. But what they did was take away their medicine and force them to jog in 110 degrees heat, and nobody does this. This again is not realistic. The only realism you will find is in the minds of bureaucrats who do not live in the real world.

We can get 90 percent of the benefits from 10 percent of the costs. What EPA is trying to do is reach that final 10 percent of the benefits which incurs the rest of the costs, which is 90 percent. You do not need to be a rocket scientist to understand that 10 percent of the benefits is not worth 90 percent of the costs.

We should require that benefits outweigh or exceed the costs of regulation. When you reach that 90 percent benefit level, you reach a point of diminishing returns. We are paying for much more than we are getting. Businesses do not operate this way, at least they do not operate this way very long, and neither do consumers. The Government definitely should not either. For an incremental benefit of 1 percent, we should only have to pay an incremental cost of 1 percent or less. Nowhere else but in the Federal Government do people spend $1 million to get $100 worth of benefit, and we must end this practice.

The Clean Air Act refinery MACT rule is a perfect example. As proposed, the rule would cost approximately $10 million and only save less than one-half of one life.

The cost-benefit language in the Dole bill is good but not good enough. And it is a shame it does not apply to all existing statutes. As a Member of the Environment and Public Works Committee, I will strive to place good cost-benefit language in all future reauthorizations, yet I must point out my disappointment with the cost-benefit language in this bill. Perhaps we can work together and strengthen it later. And,

of course, it is the only dog in this hunt at this time.

Let me suggest something. Yesterday, I ran out of time when I was talking about the Regulatory Reform Act, and there are a couple of examples that I wanted to use. I had used some examples from around the country, but I did not use the local examples.

Once before, when we were talking about Superfund abuse, which we are dealing with here also, I told the story of a very close personal friend of mine in Tulsa, OK. His name is Jimmy Dunn. His family has Mill Creek Lumber Co. It is the third generation to run this lumber company—highly competitive. It is in an environment in which many of them do not exist; they are not able to survive.

He called me up. At that time, I was a Member of the House. He said, ''Congressman INHOFE, the EPA has just put me out of business.'' I said, ''What did you do wrong?'' And Jimmy Dunn said, ''I don't think I did anything wrong, but for the last 10 years we have been using the same contractor to sell our used crankcase oil.'' And that contractor was licensed by the Federal Government; he was licensed by the State Government; he was licensed by Tulsa County, and yet they traced some of the crankcase oil from this contractor to the Double Eagle Superfund site.

He read the letter he received from the administrator of the EPA, the last paragraph of which said we are going to impose $25,000-a-day fines on you and possible criminal sanctions.

Now, we were able to stop that, but for every one that we find out about and are able to help, there are thousands that we do not find out about.

I had a visitor in my office yesterday who is the administrator of the endangered species here and a very nice lady, and we visited about it. She said, ''Well, I can count on both hands the number of prosecutions we have had. It is fictitious to say that we are being abusive in the Endangered Species Act.'' I said, ''You miss the point altogether.'' For each one that is ultimately a conviction or a prosecution, you have 100,000 of them out there that are threats, that are threatening those people who are working hard, making money to pay taxes for all this fun that we are having up here.

I have a guy that I met 4 days before Christmas. His name is Keith Carter. Keith Carter lives in a little town in Oklahoma—Skiatook, OK—just north of Tulsa, OK. It is a very small community. Keith Carter developed a spray that he puts on horses. I do not know what it does, but apparently there is a market for it. Keith Carter called me 4 days before Christmas and Keith Carter said, ''Congressman, EPA has just put me out of business and I have to fire my only four employees 4 days before Christmas.''

The PRESIDING OFFICER. The Senator's time has expired.

Mr. INHOFE. I ask unanimous consent for 2 additional minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INHOFE. I thank the Chair. I do want to finish this story.

What had happened in the case of Keith Carter is that Keith Carter had moved his location from his basement up the street three houses for a larger place. He told the EPA regional office in Texas about it, but he did not tell the office in Washington, and so they took away his number. So we got his number back. It took 3 weeks to do it. Finally, we got his number back.

He called me back. He said, ''Congressman, I have another problem; now I can't use my inventory, 25,000 dollars' worth of silkscreen bottles, because they have the old number on them.'' Well, this is the type of harassment that has taken place.

Lastly, since the Senator from Tennessee brought this up, there is a brilliant guy, a Dr. Bruce Yandle from Clemson University, that made a discovery that everyone should focus on at this time. We are all concerned about deficits. What he discovered was—and he skewed this draft out for us—that there is a direct relationship between the number of pages in the Federal Register, which indicates the number of regulations, and the deficit. These yellow bars down here signify and represent the deficits during these years starting all the way back in 1950 going up to the current year. And if you look at this, it follows exactly along the line of the pages in the Federal Register. So, I would say to those individuals, if you are looking for another excuse, if you do not believe that we have an obtrusive, abusive Government, then look at it from a fiscal standpoint. If you really want to balance the budget, to eliminate the deficit, there is no single greater thing we can do than stop the excessive regulations in our society. And this is our opportunity to do it.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Kansas is recognized under the previous order to speak for up to 10 minutes.

Mrs. KASSEBAUM. I thank the Chair.

(The remarks of Mrs. KASSEBAUM and Mr. KENNEDY pertaining to the introduction of S. 1028 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from North Dakota is recognized to speak for up to 15 minutes.

COMPREHENSIVE REGULATORY REFORM ACT

Mr. DORGAN. Mr. President, the subject on the floor of the Senate is regulatory reform. It is an important issue. Nearly all of us in this Chamber know that there are many Americans confronted these days with regulations that they think do not represent common sense, regulations that are too burdensome, regulations that do not seem appropriate or right. I understand that. I think some of that does exist. And when and where it exists, we ought to put an end to it. Americans have enough trouble without having to deal with regulations that do not make sense.

But the story of regulations is a story with more than one chapter. Another part of the regulations story is the regulations that we have put in place that improve life in this country; regulations that require inspection of food so that we have safe food to eat; regulations that require an approval by the Food and Drug Administration of drugs that are being proposed to be marketed in this country so that consumers have some confidence that these drugs are safe; regulations that prohibit big corporations from dumping their chemicals into our streams and into our lakes and rivers; regulations that prohibit big corporations from pouring pollution into our air. Many of those regulations are critically important, and we ought to keep them.

It is interesting, most of what we see in the Congress is a debate about failure, it is never much a debate about success. Let me just for a moment describe for my colleagues a success.

Today, we use twice as much energy in this country than we did 20 years ago, but we have in this country today, by all standards of measurement, cleaner air. Why would we have cleaner air, less pollution, less smog in this country today than we did 20 years ago if we use twice as much energy? Because this country and this Congress said we are going to change the way we behave in this country; we are not going to allow polluters to any longer pollute the air; we are going to require them to clean up their emissions. And the result is a success story. It has been the Clean Air Act, with all of its imperfections, that has stopped the degradation of America's air. That is a success.

Should we retreat on that? Should we decide that regulations that require corporations to stop polluting are burdensome so, therefore, they should not have to stop polluting? Should we go back to the good old days where we dump all this pollution into the air and let our kids breathe it and say it does not matter, that we can deal with the consequences later? I do not think so. I do not think the American people would believe that we want to go back to those days.

How about water? There is a book by Gregg Easterbrook recently published that talks about these success stories. We have less acid rain and cleaner water these days than we had 20, 25 years ago. You all remember the story about the Hudson River starting on fire.

Now why would a river start to burn? Because of this enormous amount of pollution that was going on in this

country. Now our rivers and lakes and streams are cleaner and we have less acid rain. Why is that the case? Is it because someone decided in a corporate boardroom someplace we really have to stop doing this, we have to spend money to stop doing it to clean up our water? No, it is not because of that. It is because Congress decided this ought to stop and that reasonable regulations and rules ought to require the big polluters to stop polluting. The result is, we have cleaner air and cleaner water.

Are all these regulations perfect? No, not at all. Should some be changed? Yes. But should we retreat in this country on the requirement with reasonable regulations to say to those who would pollute our air and water you have to stop polluting? Of course not. We should not retreat on that. What we have done there is a success story for our country.

Should we retreat on food safety? Of course not. That is not what the American people expect us to be doing.

Now, I have been interested in the way this debate has gone here in the Senate. It has gone like every other bill we have seen this year. A bill is brought to the floor of the Senate and, within hours, the majority party starts complaining about the minority party stalling. Well, this bill was brought to the floor of the Senate much as regulatory reform bills were brought to the committee on which I serve, the Governmental Affairs Committee. The first such bill we saw in committee was a moratorium, a regulatory moratorium; and the majority party thought, gee, this really sounds great, we will just stop everything, no more rules will be issued. No more regulations will be issued. We will stop them in their tracks until a time certain later.

Some of us said that does not make sense. We said the bill does not discriminate between good and bad rules, good regulations and bad regulations. We decided to offer some amendments. And so we offered amendments on E. coli, on clean water, on cryptosporidium, on mammography standards, on commuter airline safety standards, which we were sure the majority party did not want to interrupt. Did they really want to interrupt a regulation that establishes the reasonable standards for mammography screenings for breast cancer? No; it turns out that is not really what they intended to do. What about E. coli? Did they intend to allow for degradation of food safety standards? No; it turns out they did not intend to do that either. We went through a whole series of amendments, and it turns out that is not what they really intended to do.

Well, they come to the floor with a regulatory reform proposal, and we have a number of amendments that we are prepared to offer. The fact is that you cannot get amendments up on the floor. Oh, we got one up yesterday and it took all day. The folks that offered the amendment were ready to vote at noon. We did not vote until the end of the day. Why? Well, because the other side is stalling, and they accuse us of delaying. That is a curious, interesting approach to legislative strategy. You stall and accuse the other side of delay. So far, there have been 16 amendments offered on this bill; 14 of the 16 have been offered by the other side, and only two by those who want to change the bill or would support a substitute to the bill.

If we want to finish this bill—and I do—and if we want to move ahead—and I think we should—we ought to decide to allow all these amendments to be offered, the amendments that address the specific issues. Do you intend really to degrade seafood safety standards? I do not think so. Let us offer an amendment to guarantee that is not the case. Do you intend to undercut and degrade clean air standards? I do not think so. Let us decide we want to vote on that.

Let us offer those amendments. I expect most people would be willing to offer them expeditiously, with time agreements, and we will vote on them. And no one, in my judgment, could genuinely suggest anyone here is stalling. The stall comes from those who bring the bill to the floor but do not want amendments offered that they do not want to vote on. That is the stall. I understand that. But it is not the way we ought to do bills. There are good regulations and bad regulations. We ought to get rid of the bad and keep the good.

I heard somebody this morning talk about the burden. We place an unfair burden on America's corporations with respect to regulations. Well, I will tell you, some corporations have relieved themselves of that burden. Two or three applications a day are being approved for new plants on the maquiladora border, south of the Mexican-United States border—two or three a day. These are new American plants that move to Mexico. Why do they move down there? Because Mexico is a place where they can produce things differently than in our country. First of all, it is much cheaper; they can pay lower wages, and often they can hire kids.

Second, they do not have the enforcement on environmental controls. You can move your plant to Mexico and pollute. You do not have to be burdened by all of those unreasonable standards in the United States; if you are going to produce something, you should not pollute water and air. So it costs less to produce there.

Is it right? Is that the future? Is that what we want to have happen? I do not think so. Is the answer to it to decide we should not burden them, that they should pollute while in this country? I do not think that is the case either.

I think we have provided some good leadership with respect to our set of regulations on requiring polluters to stop polluting, in requiring those who are involved in processing the meat in this country to process it in conditions that we feel are safe for the American consumer. I do not understand those who believe that these are burdens on America's corporations that must be relieved with a bill that cannot be amended because they do not want to vote on these specific issues.

We have been treated in recent months to a lot of very substantial reforms, some of which I have thought made a lot of sense, some of which should have been passed when the Democrats controlled the Congress and were not. It is our fault. I voted for some of these reforms. I voted for unfunded mandates. I thought it made a lot of sense. I voted for the line-item veto. Some of these reforms make sense.

Some of these reforms brought to the floor of the Senate are inherently radical reforms, responding to the big money interests of this country. Regulatory reform, for anybody who is interested, has been largely written by the special interests, by the large corporate interests, largely written by the large corporate interests who want to get out from the burden of costly regulations. I understand that. I understand why they want to do that. But the public interest has been established here from our perspective that we want that burden imposed to require clean air and water and safe food and the rest.

We had a fight in North Dakota in the 1970's when they were going to process coal to produce electricity. I and the then Governor decided the only way we were going to give water permits was to fight for the latest available technology to be put on those plants, which included then wet scrubbers, very expensive environmental control technology, in order to protect North Dakota's air. Well, obviously, the coal industry and others who were processing that coal, the electric generating industry, did not want any part of that. They did not want that. Why? Because it costs money. I understand why. I understand why they fought it. But we were right and we insisted on it, and we now have those coal-fired generating plants in North Dakota. But the fact is the latest available technology was included on those plants, which included wet scrubbers to reduce the effluent that goes into the air. I cannot be more pleased about the fight I was involved in in the 1970's requiring that that happen. We were considered fairly radical at the time. We were environmentalists. We were trying to impose costs on industry. Yes, we were. We wanted those who purchased the electricity from those plants to help pay the costs of keeping the air clean. Is that radical? Well, it was called radical, but I do not happen to think it is. I think it is right.

I am a little tired of special interests beating the drum and calling the tune in this town, to suggest that somehow they now need their burdens relieved—especially when they tell us of those burdens of having to comply with the Clean Air Act, Clean Water Act, food safety standards, and the like.

Yes, let us have regulatory reform, and let us do it in the right way. Let us be aggressive in making sure that regulations make good common sense. Let us get rid of silly, useless regulations, and let us get rid of the people that write those kinds of regulations. But, at the same time, let us make sure that we protect this country with reasonable regulations that protect our air, water, food safety, and more. That ought to be the job for all of us on the floor of this Senate. There ought not be any disagreement about it. Nor should there be disagreement about whether anybody is stalling. If the majority party will simply allow those who believe that amendments are necessary to this bill to be offered and debated, this bill will move, and move quickly—with proper amendments.

But it is disingenuous, in my judgment, to be delaying because you do not want to vote on amendments, and then accuse the other side of stalling. That is not much of a legislative strategy and will not produce much of a result for this country.

Mr. President, I yield the floor.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER (Mr. CAMPBELL). Under the previous order, the Senator from Wyoming is recognized to speak for up to 10 minutes.

(The remarks of Mr. SIMPSON and Mr. BINGAMAN pertaining to the introduction of S. 1029 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

EXTENDING TIME FOR FILING FIRST-DEGREE AMENDMENTS—S. 343

Mr. SIMPSON. Mr. President, on behalf of the leader, I ask unanimous consent that, notwithstanding the provisions of rule XXII, all Senators have until 5 p.m. today in order to file first-degree amendments to the pending Dole-Johnston substitute to S. 343, the regulatory reform bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Madam President, was leader time reserved?

The PRESIDING OFFICER. The Senator is correct.

DISASTER IN SREBRENICA

Mr. DOLE. Mr. President, I had hoped that the profound disaster in Srebrenica would have provoked a greater response from this administration than what we have seen in the last 48 hours. Tens of thousands of Bosnians have fled, Dutch peacekeepers are being held hostage, young girls are being taken away by Bosnian Serb forces, and the two other eastern enclaves—also U.N. designated safe havens—are under continued attack. Yet, instead of leadership, all the administration has to offer is press spokesmen to defend this catastrophe.

The best defense would be a change in the present approach. However, that is unlikely from what the cadre of administration spokesman have said.

Despite the obviousness of this colossal failure, Western leaders cling stubbornly to the myth that no other options exit.

There are reports that the administration is working with the allies to withdraw U.N. forces from the Eastern enclaves and redeploy them in central Bosnia and Sarajevo. In my view, this would be redefining failure.

I remind my colleagues that in the spring of 1993, Secretary Christopher went to Europe with the lift-and-strike plan and returned with the joint action plan. This plan was sold as the humanitarian option. The option that put the Bosnians' interests first. The joint action plan committed the United States, Britain, France, Russia, and the European Union to the protection of six U.N.-designated safe havens and closing the borders between Serbia and Bosnia.

There are those of us who urged the administration not to go along with this so-called plan, who warned that creating giant refugee camps with minimal defense would support Serbian war aims. We were ignored.

I might say these suggestions came not just from this side but on both sides of the aisle.

The administration went ahead and what a trade. Two years later Milosevic is still sending supplies and troops across the border and, the Bosnians are not only defenseless, but undefended.

Now we are faced with a widening catastrophe, but there is no longer any attempt to save the Bosnians—only to save face. The rapid reaction force is intended to save face.

I believe that the United Nations must begin preparations for withdrawal immediately. I am prepared to support the use of U.S. forces, if they are necessary, but under strict conditions.

If we have to use U.S. forces, it is going to be because of a total lack of policy by the Clinton administration. We are going to be backed into the use of U.S. forces because of a lack of clear leadership by this administration. That should be clear to everyone.

But even having said that, we have some obligations and I would be willing to support use of U.S. forces—under strict conditions.

First, unified NATO command—no dual key.

Second, robust rules of engagement which provide for massive retaliation if any U.S. forces are attacked.

Third, all necessary measures are taken to protect United States and NATO personnel from likely threats—from any source, to include Serbia—to include the suppression of Serbian air defenses.

Fourth, no risking U.S. lives to save equipment.

Fifth, agreement from our allies to lift the arms embargo on Bosnia.

The administration must know that it will be held responsible and that if these conditions are not met, the risk to U.S. forces will be far greater than necessary.

Mr. President, the United Nations must withdraw and the arms embargo must be lifted. The United States cannot continue to subsidize and support a U.N. mission that serves largely to supervise ethnic cleansing and aggression. The United States must exercise leadership and support the fundamental right of self-defense.

I listened last night to one of the spokesmen, a White House press person, talking about Bosnia. He said, ''Well, we cannot afford to lift the arms embargo. That would cost us money.''

What does he think we are spending now? We are spending a great deal of money, and we are picking up 31 percent of the tab right now in Bosnia. Hundreds and hundreds of millions of dollars have been spent by the U.S. taxpayers. So I wish if they are going to trot out the press spokesmen, at least they should have the facts correct and tell the American people the truth, and give them an accurate report of what is actually happening.

I yield the floor.

WAS CONGRESS IRRESPONSIBLE? LOOK AT THE ARITHMETIC

Mr. HELMS. Mr. President, on that evening in 1972 when I learned that I had been elected to the Senate, I made a commitment to myself that I would never fail to see any young person, or any group of young people, who wanted to see me.

It has proved enormously beneficial to me because I have been inspired by the estimated 60,000 young people with whom I have visited during the nearly 23 years I have been in the Senate.

Most of them have been concerned about the magnitude of the Federal debt that Congress has run up for the coming generations to pay. The young people and I always discuss the fact that under the U.S. Constitution, no President can spend a dime of Federal money that has not first been authorized and appropriated by both the House and Senate of the United States.

That is why I began making these daily reports to the Senate on February 22, 1992. I wanted to make a matter of daily record of the precise size of the Federal debt which as of yesterday, Wednesday, July 12, stood at $4,927,810,673,266.79 or $18,706.05 for every man, woman, and child in America on a per capita basis.

Mr. SIMPSON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SPECTER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Under the previous order, the Senator from Pennsylvania, [Mr. SPECTER]

is recognized to speak for up to 15 minutes.

THE RUBY RIDGE INCIDENT

Mr. SPECTER. Mr. President, I have sought this special order for recognition this morning to renew my urging that the Senate conduct oversight hearings into the incident at Ruby Ridge, a subject that I have spoken on at length on the Senate floor—on May 9, 10, 11, 18 and 26—and on those occasions urged that hearings be conducted before the August recess because of what I view to be the urgency of the situation.

I renew that request in light of the release by the Federal Bureau of Investigation yesterday, and the extensive publicity in the news media today, reporting on the suspension of a ranking FBI agent involved in the Ruby Ridge incident, the suspension occurring ''after authorities allege that he destroyed a document that could have altered the official account of what happened at the standoff on August 22, 1992.''

Mr. President, it has been my judgment for some considerable period of time that the Congress has been derelict in failing to have oversight hearings on very serious matters involving Federal law enforcement operations in the United States, and that it is up to the Congress as a matter of congressional oversight to make sure that there is accountability at all levels of the Federal Government.

I have considered very carefully the very heavy responsibility of law enforcement officials, the FBI, the Bureau of Alcohol, Tobacco and Firearms, and others, agencies that I have worked with extensively over my whole career of public service—since I was district attorney of Philadelphia—and have a full appreciation of the very high risks that law enforcement officers at all levels undertake. But there is great concern in America today about excessive Federal authority, and about the incidents which have occurred not only at Waco but also at Ruby Ridge.

This is in line with the concern in this country, which is as old as the Declaration of Independence itself, in challenging the legitimacy of government.

That brought the revolution and the founding of the United States of America. Our history is full of challenges to be sure that the Bill of Rights is respected. It is no coincidence that the United States has had the longest record in world history for stable government, no coincidence that record is the result of having a Bill of Rights which has been meticulously enforced, and one of the agencies of enforcement is the constitutional prerogative and responsibility of the Congress of the United States to conduct oversight.

Mr. President, it is a matter of the utmost gravity when there are allegations that there has been the destruction of a document which could shed light on what happened at Ruby Ridge, and this is only another step along the way on matters which already were in the public record suggesting substantial impropriety.

In my statement on the Senate floor on May 26, I referred to a letter from FBI Special Agent Eugene Glenn, who was on the scene at Ruby Ridge, and who was disciplined, and Mr. Glenn had this to say on page 6 of an extensive letter which he wrote to Mr. Michael Shaheen of the Justice Department's Office of Professional Responsibility:

> On August 22, 1992, then Assistant Director Potts advised during a telephonic conversation with the special agent in charge that he had approved the rules of engagement and that he articulated his reasons for his adjustments to the Bureau standard shooting policy.

At that time, I called the attention of my colleagues to the fact that in my personal conversation with Mr. Potts on May 17, he said to me categorically, ''There was never a change in the rules of engagement.'' And Mr. Potts advised me further that there was ''no authorization to change the deadly force policy.''

Mr. President, as I have said previously in this Chamber, I have talked extensively to people who have participated, been involved in the incident at Ruby Ridge. I talked to Mr. Randy Weaver at some length back on May 13, 1995, and got his account of what was truly a tragic incident which resulted in the killing of a deputy U.S. marshal, the killing of Mr. Weaver's young son, Sam, who was shot in the back, and the killing of Mr. Weaver's wife, who was holding their infant daughter.

The entire incident involving Mr. Weaver occurred, according to Mr. Weaver, when he was approached by agents from the Bureau of Alcohol, Tobacco and Firearms asking if he could sell them sawed-off shotguns, which apparently he later did in a context where a court found it to be entrapment. I questioned Mr. John Magaw, the Director of the Bureau of Alcohol, Tobacco and Firearms, and he conceded to me that there was what he called borderline entrapment in the Weaver case.

So that you have a sequence of events of Mr. Weaver living in Boundary County, ID, right next to the Canadian border, really wanting to be left alone, an incident with this issue of entrapment, and later the marshals coming to the premises of the Weaver household. And then you have an incident, tragic, the killing of a deputy U.S. marshal, two members of the Weaver family, and then a dispute as to whether the FBI acted properly under the rules of engagement; and then yesterday the disclosure that in fact there had been some indication of further wrongdoing.

This is a matter, Mr. President, in which it seems to me it is imperative that the Congress of the United States exercise its oversight responsibilities.

We have had on the record for some time glaring conflicts which need to be investigated, inquired into by the Congress—the disparity between Special Agent Glenn, who is in charge of the FBI office in Salt Lake City, and the account of Mr. Potts, who has since been promoted to the position of Deputy Director of the FBI.

As noted in this morning's Washington Post:

> Last year, a Justice Department task force sharply criticized the FBI action during the incident.

Referring to Ruby Ridge.

> The task force concluded that the Bureau's conduct ''contravened the Constitution'' and that criminal charges should be considered against the responsible agents. The task force report was forwarded for comment to the Justice Department's Office of Professional Responsibility and the Civil Rights Division. Those offices in their evaluations held that no criminal conduct took place.

Now, Mr. President, I submit that in the context of a task force report saying the Constitution has been violated and suggesting criminal prosecution, and a disagreement within the Department of Justice itself, that we have is the quintessential circumstance where the Congress of the United States has oversight responsibilities. And yet we sit by idly and do nothing.

I have said on the Senate floor that in my judgment Congress has been derelict in its duties. I think it is a matter of nonfeasance, the failure to perform a positive obligation and a positive duty. And for the Congress, the Senate, the Judiciary Committee to continue to turn its back would amount to more than nonfeasance, perhaps misfeasance, perhaps malfeasance.

There is great unrest in America today, Mr. President, as we all know, with the development of extensive militia around the country and a vivid, active distrust for what goes on in Washington. I can understand that distrust in the face of what I see personally as a Member of the Senate and as a Member of the Senate Judiciary Committee. I not only understand that distrust and skepticism, but I share it in the absence of any oversight having been undertaken by the Congress, the Senate, and the Judiciary Committee on these important matters.

I made an effort to hold these hearings with the Subcommittee on Terrorism, the subcommittee which has jurisdiction over these matters, and I was thwarted in that attempt to do so. And I took the highly unusual step of bringing the matter to the floor of the Senate in a resolution calling for hearings on Ruby Ridge, among other things, in advance of the August 4 recess.

I had no doubt, Mr. President, no naivete that that resolution was not going to be adopted in the face of our standards as to prerogatives of chairmen, but it seemed to me sufficiently serious to bring it to the floor of the Senate and to bring it to a head.

In my capacity as chairman of the Terrorism Subcommittee, I have had a

series of hearings, four hearings on the subject, one of which involved the militia where law enforcement officials from the FBI, the Bureau of Alcohol, Tobacco and Firearms, the State police chief from Missouri, and prosecuting attorneys from Phoenix, AZ, and Musselshell County, MT, came forward and testified about the dangers of the militia and at the same time, same hearing, a second panel testified about the reasons why the militia are growing in the United States, members of the militia talking about the distrust of what goes on in Washington, accusing the committee, accusing the Senate, accusing this Senator of corruption, and a very heated exchange followed in which I did not take that accusation lightly. And I do not. But I must say, Mr. President, that I worry about our country when this kind of information is open and notorious and there is no response from this body, from the Judiciary Committee, to have these oversight hearings.

I think that when you now have, beyond the issues which I have raised, where you now have the lead story in this morning's Washington Post, under the banner headline, ''Probe of FBI's Idaho Siege Reopened,'' detailing the destruction of documents on top of the contradictions and problems in this investigation, that this is highly likely to produce the kind of public pressure which it appears is the only way to get any results on a matter of this sort.

Mr. President, I think it is a matter of the utmost gravity and the utmost seriousness, and we sit really on a powder keg with a lot of distrust and anxiety and anger welling up across the country as to excessive action by the Federal Government. Accountability at the highest levels is absolutely mandated, and it is the responsibility of the Congress and the Senate and the Judiciary Committee to conduct these oversight hearings and, in addition to having discussed these matters privately with the appropriate authorities within our own body, I think it absolutely necessary to make the statement as forcefully as I can to urge that these hearings be conducted, conducted promptly and, in any event, before we adjourn for the August recess.

TRIBUTE TO FRANCIS J. BAGNELL

Mr. SPECTER. Mr. President, I would now like to take the few minutes remaining before morning business expires, in the absence of any other Senator on the floor, to comment on the passing of a great American, Francis J. Bagnell, commonly known as ''Reg'' Bagnell, who, as we speak, is having memorial funeral services conducted in the Philadelphia suburbs.

Reg Bagnell has been an outstanding figure in the Philadelphia area in Pennsylvania and in America as a contributor to important causes. He achieved legendary fame as a young football player at the University of Pennsylvania in the fall of 1946. Reg Bagnell and I were classmates at the University of Pennsylvania in 1951. And I was one of those who sat in the stands and admired his prowess. He weighed about 160 pounds and played tailback. On the old single wing on one glorious autumn day in 1946, he threw 14 consecutive passes against Dartmouth. And he followed his all-American status by being an all-American contributor to the American scene. And I thought it appropriate to take just a few moments to recognize Reg Bagnell's great contribution, not only as an athlete but as a community activist and as a great American.

I see it is now 10:45, Mr. President, the time to adjourn morning business, so I conclude and yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order the hour of 10:45 having arrived, morning business is closed.

COMPREHENSIVE REGULATORY REFORM ACT

The PRESIDING OFFICER. The Senate will now resume consideration of S. 343. The clerk will report.

The legislative clerk read as follows:

A bill (S. 343) to reform the regulatory process, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Dole amendment No. 1487, in the nature of a substitute.

Roth/Biden amendment No. 1507 (to amendment No. 1487), to strengthen the agency prioritization and comparative risk analysis section of the bill.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. Mr. JOHNSTON is recognized.

Mr. JOHNSTON. Mr. President, last night after I had left the Chamber and repaired to my home, a cloture motion was filed on this bill of which I was totally unaware. Mr. President, I believe that that was exactly the wrong thing to do on this bill. I believe we were making good bipartisan progress on this bill. It is a difficult, complicated bill. I think the legislative process was proceeding, if not with dispatch, at least with a spirit of dealing with the issues. And I think we have begun to make great progress.

Just overnight last night, for example, in a good spirit of bipartisan progress, I understand we have worked out the Roth amendment, I believe to the satisfaction of both sides. That will remain to be seen. But I believe that is so. I think we had a session scheduled this morning for 9:30 dealing with some of those on our side of the aisle who, in a spirit of bipartisan cooperation, wanted to try to work out some of the remaining issues. And I think there was some hope that that could take place.

With the filing of the cloture motion, that meeting was called off because our side, the Democratic side, had to repair to put in all of these amendments which had to be prepared by, I think, 1 p.m. today.

Mr. President, I have just come from a meeting with the majority leader and have urged him in the strongest way possible to withdraw the cloture motion, to let us continue on in a bipartisan spirit to work our way through these amendments. I have not seen yet on this bill delaying tactics. All of the amendments which have been proposed obviously have not been amendments which I have agreed with. But I think they were legitimate amendments. And on, for example, the cryptosporidium amendment last night—I think that was a serious amendment—there was also a time limit agreed to. And, Mr. President, that is not the stuff of a filibuster, when you have a serious amendment with a time limit. So, I am in good hopes, Mr. President, that we can withdraw that cloture motion and let us legislate.

Today, I hope to deal, for example, with the suggestion that Senator GLENN made yesterday about extending the 180-day period for completion of the cost-benefit analysis when you invoke the emergency provisions of the bill when there is an emergency with respect to health, safety, or the environment. I think we can agree to that. It was a good amendment. I hope we can agree to that.

I am very strongly for removing environmental cleanup or Superfund from this bill. I hope to join with Senator BAUCUS in proposing that amendment this morning. I hope we can get that done with a short time agreement.

So, Mr. President, I have urged the majority leader, as I say, in the very strongest way possible to withdraw the cloture motion. Let us return to legislating rather than having to prepare a finite list of amendments. I will say from my side of the aisle I believe that we can secure cooperation. I do not believe there is a filibuster.

Mr. President, if there were a filibuster, we would not have had, believe me, a 30-minute time limit on cryptosporidium last night. That is a great issue to talk about for days. I mean, it has all those elements—public health, people dying. It is a serious issue. But it was a serious amendment. We took a vote on it. I happen to be for the motion to table, not because I do not have sympathy on the issue—I mean more than sympathy; I think it is a tremendous issue—but because I think we had it taken care of. And I might say that I and others spoke to Senator KOHL last night and said we believe we are confident that this issue has been resolved by the earlier Johnston amendment.

However, we will look at that issue between now and the conference, and if it needs fixing, if there is any assurance that we need to give to people that cryptosporidium will not be a problem, that the regulation of it will

not be hindered or delayed, we are prepared to do that. I know I heard Senator HATCH say that very thing, and I have given that assurance to Senator KOHL. That is the kind of spirit which I think we need on this bill to successfully pass it.

I hear from my caucus that we want a good, reasonable, workable regulatory reform bill. We certainly hear that from the other side of the aisle. We ought to build on that spirit. To be sure, there are differences on how we think we would arrive at that, but they are differences which can be reconciled.

So, Mr. President, I am hopeful that this will be a productive day of legislating; that we will, in fact, withdraw the cloture motion; that we will resume serious legislating in a spirit of bipartisan cooperation.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah [Mr. HATCH] is recognized.

Mr. HATCH. Mr. President, I got here about a quarter to 7 this morning. I happened to have left before the cloture motion was filed myself and was not sure whether the distinguished majority leader was going to do that, which he has every right to do, especially where it is believed there is a delay for delay's sake.

I remember in the last number of Congresses when Senator Mitchell was the majority leader, they would call up a bill and file cloture that day on almost every controversial bill—it was just amazing to me—and accuse us of filibustering right from the word go. We are now on the fourth day of this—actually the sixth. We have had very few amendments, and the ones that we have had are amendments that seem to want to repeat what is already in the bill.

Be that as it may, I showed up for our negotiating session this morning. I had to testify on the Utah wilderness bill at a 9:30 meeting. I showed up and the room was empty. I was prepared, as my distinguished friend from Louisiana was, to sit down with our colleagues on the other side to find out what we can do to narrow the amendments and resolve any conflicts that exist and try to bring us together, if we can.

I have to say, my friend from Louisiana and I have worked long and hard to try and bring us together, to try and accommodate those on the other side who differ with us on this bill.

There are things we have been able to do and there are things we have not been able to do. On the list they provided us, we gave them answers on every one of the items, and most of the answers were that we cannot do this. But there were still some areas where we probably could get together and hopefully resolve some of the differences between the two sides. If we cannot resolve differences and the amendments are really serious and decent amendments, then we will just have it out on the floor. Whoever wins wins, and we just vote them up or down. I am hopeful our side will stand firm against some of these amendments.

Nobody is trying to give anybody a rough time. The majority leader has a lot of pressure on him to get this matter resolved and to save as many days as he can so that we do not cut into the August recess. He has all kinds of things on the plate that need to be heard, so naturally he wants to move ahead. I want to move ahead. The distinguished Senator from Louisiana would like to move ahead. We would like to resolve the difficulties and certainly have people feeling good about it.

I do not think there is any real reason for any person after 5 days on the bill to pitch a hissy fit with the fact that a cloture motion has been filed. That has happened around here all my Senate career. It is not unique. It says, ''Let's get busy, let's work and get this done.'' I hope the two leaders can work out some way of getting this done. I also hope that we can all work together on this floor.

This is such an important piece of legislation that I hope we can all get together on this floor and help bring it about. This legislation will save lives. This legislation will provide the very best science applicable to some of the most important problems and issues of our society. This legislation will solve the problems, or at least go a long way toward solving the problems of the overregulatory nature of our society, and some of the ridiculous regulations that all of us put up with.

I know some have not liked my top 10 list of silly regulations, but I am going to bring them up everyday anyway, because there are those who are very dedicated to the bureaucracy around here. That is where their power comes from. They can have the bureaucracy do what they could never pass on the floor of the U.S. Senate. It does not make any difference what it is going to cost, the bureaucracy just does it. This bill says, no, you are going to have to have a cost-benefit analysis and risk assessment to determine how dangerous it is before you go and saddle the American people with unnecessary costs and tremendous burdens, and you have to be more serious about regulations rather than have these silly, dumbbell regulations that are eating our country alive and costing us billions of unnecessary dollars, to the extent of $6,000 to $10,000 per family in this society.

Let me just give my top 10 list of silly regulations. This is list No. 5.

Let me give you silly regulation No. 10: This is where over two dozen agents, some in helicopters, stormed a farmer's field and seized his tractor for allegedly harming the endangered kangaroo rat. The farmer was never notified that his land was a habitat for the rat, and even the Federal officials were not certain which type of rats were on his land. And yet they came and stopped this farmer from doing his farming that he had done for years on the basis of an alleged harm to an endangered alleged kangaroo rat. That is silly, but that is what our people out there are going through.

Let me give you silly regulation No. 9: Fining a company for worker safety violations such as: a cut in the insulation of an extension cord which had been taken out of service, three citations, and a splintered handle on a shovel, in spite of the fact that the shovel was placed in the back of a truck after it broke.

Now, that is silly, but that is the type of regulation and interpretation of regulations we are going through in this society.

Silly regulation No. 8: Requiring so many procedures that it took a business an entire month to hire just one person. Because of such complexity and the extreme penalties that go with violations, the owner has resolved never, never to hire more than 10 workers, despite the fact that each worker logs 500 hours of overtime in a year. He just is not going to put up with this type of regulation, and having 10 or fewer, he does not have to. Except he did have to spend an entire month to just hire one person.

Silly regulation No. 7: Fining a roofing company for failure to have a fire extinguisher in the proper place, in spite of the fact that it had been moved to prevent it from being stolen by passersby as three other extinguishers had been in the preceding 3 days.

Silly regulation No. 6: Requiring a trucking company to spend $126,000 to destroy nine fuel tanks which were not leaking.

Silly regulation No. 5: Denying a wetland permit application and ordering an elderly couple to remove dirt in an alleged wetland—dirt which had been placed on the land by the city 10 years before the couple bought the lot—only to concede a year later that the couple did not need a permit to have the fill on their land. That is silly.

Silly regulation No. 4: Seeking a $14 million fine against farmers who were accused of violating the Clean Water Act by building a levy to prevent their farm from flooding. That is ridiculous, but that is what they did, a $14 million fine against these poor farmers who just wanted to prevent their farm from flooding.

Silly regulation No. 3: Prohibiting an 80-year-old farmer from farming his land, claiming it was a wetland when a local business accidentally cut a drainage pipe.

I only have two more, and then I will yield to the majority leader.

Silly regulation No. 2: Preventing a company from harvesting any timber on 72 acres of its land because two spotted owls were seen nesting over a mile and a half away. No spotted owls had actually been seen on the company's land.

Let me just go to silly regulation No. 1: Requiring one of our towns in this country to build a new reservoir in

order to comply with the Safe Drinking Water Act and then prohibiting the construction of the reservoir because it would flood a wetland. Fines were threatened if the reservoir was built and if it was not built. So the town did not know what to do. It would be fined either way. That is ridiculous and silly. That is what the American people are putting up with.

We can flood this floor with silly regulations, but we will bring a top 10 list every so often just to remind people of what this is all about: to get rid of this junk and to let us live in more peace and safety in this country.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER (Mrs. HUTCHISON). The majority leader is recognized.

Mr. DOLE. Madam President, first, I want to indicate that I will be meeting with Senator DASCHLE in 2 or 3 minutes. We will be talking about the schedule for the balance of this month and into August.

As I ever said many times—not in any threatening way because it is a matter of fact—there is no question about losing part of the August recess. That is why I have been attempting to move as quickly as possible on this bill so we can go on to what I consider to be the next important thing we need to do before we have the August recess.

I will be going over that list with Senator DASCHLE in a few moments. I do not think it is unreasonable, but it will take the cooperation of all Members, and it will mean, frankly, every day we lose is a day we lose in the recess period, which I think is understandable by most Members.

I listened to the comments of the Senator from Louisiana, and I must say I apologize for not notifying him and others earlier. I had mentioned it in a press conference, and we thought it was fairly public knowledge, that we would file a cloture motion. But more important than the cloture motion is to determine when we can finish this bill and how many amendments there are, and whether we can get time agreements.

We have made some progress, but it has been painfully slow. We started on this bill last Thursday. We had a lot of debate and we did a little debate Thursday before the recess, and a little bit Friday, and we have had 3 days this week.

This is a very important bill. I did not think we would finish it this week, but I would like to finish by next Tuesday. I will discuss that with Senator DASCHLE, and I will have some announcement to all of my colleagues shortly after that time.

AMENDMENT NO. 1507, AS MODIFIED

Mr. ROTH. Madam President, I send a modified amendment to the desk.

The PRESIDING OFFICER. The Senator has the right to modify his amendment.

The amendment is so modified.

The amendment (No. 1507), as modified, is as follows:

Delete all of section 635 (page 61, line 1 through page 64, line 14 and add in its place the following new section 635:

SECTION 635. RISK-BASED PRIORITIES.

(a) PURPOSES.—The purposes of this section are to—

(1) encourage Federal agencies engaged in regulating risks to human health, safety, and the environment to achieve the greatest risk reduction at the least cost practical;

(2) promote the coordination of policies and programs to reduce risks to human health, safety, and the environment; and

(3) promote open communication among Federal agencies, the public, the President, and Congress regarding environmental, health, and safety risks, and the prevention and management of those risks.

(b) DEFINITIONS.—For the purposes of this section:

(1) COMPARATIVE RISK ANALYSIS.—The term ''comparative risk analysis'' means a process to systematically estimate, compare, and rank the size and severity of risks to provide a common basis for evaluating strategies for reducing or preventing those risks.

(2) COVERED AGENCY.—The term ''covered agency'' means each of the following:

(A) The Environmental Protection Agency.

(B) The Department of Labor.

(C) The Department of Transportation.

(D) The Food and Drug Administration.

(E) The Department of Energy.

(F) The Department of the Interior.

(G) The Department of Agriculture.

(H) The Consumer Product Safety Commission.

(I) The National Oceanic and Atmospheric Administration.

(J) The United States Army Corps of Engineers.

(K) The Nuclear Regulatory Commission.

(3) EFFECT.—The term ''effect'' means a deleterious change in the condition of—

(A) a human or other living thing (including death, cancer, or other chronic illness, decreased reproductive capacity or disfigurement); or

(B) an inanimate thing important to human welfare (including destruction, degeneration, the loss of intended function, and increased costs for maintenance).

(4) IRREVERSIBILITY.—The term ''irreversibility'' means the extent to which a return to conditions before the occurrence of an effect are either very slow or will never occur.

(5) LIKELIHOOD.—The term ''likelihood'' means the estimated probability that an effect will occur.

(6) MAGNITUDE.—The term ''magnitude'' means the number of individuals or the quantity of ecological resources or other resources that contribute to human welfare that are affected by exposure to a stressor.

(7) SERIOUSNESS.—The term ''seriousness'' means the intensity of effect, the likelihood, the irreversibility, and the magnitude.

(c) DEPARTMENT AND AGENCY PROGRAM GOALS.—

(1) SETTING PRIORITIES.—In exercising authority under applicable laws protecting human health, safety, or the environment, the head of each covered agency should set priorities and use the resources available under those laws to address those risks to human health, safety, and the environment that—

(A) the covered agency determines to be the most serious; and

(B) can be addressed in a cost-effective manner, with the goal of achieving the greatest overall net reduction in risks with the public and private sector resources expended.

(2) DETERMINING THE MOST SERIOUS RISKS.—In identifying the greatest risks under paragraph (1) of this subsection, each covered agency shall consider, at a minimum—

(A) the likelihood, irreversibility, and severity of the effect; and

(B) the number and classes of individuals potentially affected, and shall explicitly take into account the results of the comparative risk analysis conducted under subsection (d) of this section.

(3) OMB REVIEW.—The covered agency's determinations of the most serious risks for purposes of setting priorities shall be reviewed and approved by the Director of the Office of Management and Budget before submission of the covered agency's annual budget requests to Congress.

(4) INCORPORATING RISK-BASED PRIORITIES INTO BUDGET AND PLANNING.—The head of each covered agency shall incorporate the priorities identified under paragraph (1) into the agency budget, strategic planning, regulatory agenda, enforcement, and research activities. When submitting its budget request to Congress and when announcing its regulatory agenda in the Federal Register, each covered agency shall identify the risks that the covered agency head has determined are the most serious and can be addressed in a cost-effective manner under paragraph (1), the basis for that determination, and explicitly identify how the covered agency's requested budget and regulatory agenda reflect those priorities.

(5) EFFECTIVE DATE.—This subsection shall take effect 12 months after the date of enactment of this Act.

(d) COMPARATIVE RISK ANALYSIS.—

(1) REQUIREMENT.—(A)(i) No later than 6 months after the effective date of this Act, the Director of the Office of Management and Budget shall enter into appropriate arrangements with a nationally recognized scientific institution or scholarly organization—

(I) to conduct a study of the methodologies for using comparative risk to rank dissimilar human health, safety, and environmental risks; and

(II) to conduct a comparative risk analysis.

(ii) The comparative risk analysis shall compare and rank, to the extent feasible, human health, safety, and environmental risks potentially regulated across the spectrum of programs administered by all covered agencies.

(B) The Director shall consult with the Office of Science and Technology Policy regarding the scope of the study and the conduct of the comparative risk analysis.

(C) Nothing in this subsection should be construed to prevent the Director from entering into a sole-source arrangement with a national recognized scientific institution or scholarly, organization.

(2) CRITERIA.—The Director shall ensure that the arrangement under paragraph (1) provides that—

(A) the scope and specificity of the analysis are sufficient to provide the President and agency heads guidance in allocating resources across agencies and among programs in agencies to achieve the greatest degree of risk prevention and reduction for the public and private resources expended;

(B) the analysis is conducted through an open process, including opportunities for the public to submit views, data, and analyses and to provide public comment on the results before making them final;

(C) the analysis is conducted by a balanced group of individuals with relevant expertise, including toxicologists, biologists, engineers and exports in medicine, industrial hygiene and environmental effects, and the selection of members for such study shall be at the discretion of the scientific institution or scholarly organization;

(D) the analysis is conducted, to the extent feasible and relevant, consistent with the

risk assessment and risk characterization principles in section 633 of this title;

(E) the methodologies and principal scientific determinations made in the analysis are subjected to independent peer review consistent with section 633(g), and the conclusions of the peer review are made publicly available as part of the final report required under subsection (e); and

(F) the results are presented in a manner that distinguishes between the scientific conclusions and any policy or value judgments embodied in the comparisons.

(3) COMPLETION AND REVIEW.—No latter than 3 years after the effective date of this Act, the comparative risk analysis required under paragraph (1) shall be completed. The comparative risk analysis shall be reviewed and revised at least every 5 years thereafter for a minimum of 15 years following the release of the first analysis. The Director shall arrange for such review and revision with an accredited scientific body in the same manner as provided under paragraphs (1) and (2).

(4) STUDY.—The study of methodologies provided under paragraph (1) shall be conducted as part of the first comparative risk analysis and shall be completed no later than 180 days after the completion of that analysis. The goal of the study shall be to develop and rigorously test methods of comparative risk analysis. The study shall have sufficient scope and breadth to test approaches for improving comparative risk analysis and its use in setting priorities for human health, safety, and environmental risk prevention and reduction.

(5) TECHNICAL GUIDANCE.—No later than 180 days after the effective date of this Act, the Director, in collaboration with other heads of covered agencies shall enter into a contract with the National Research Council to provide technical guidance to agencies on approaches to using comparative risk analysis in setting human health, safety, and environmental priorities to assist agencies in complying with subsection (c) of this section.

(e) REPORTS AND RECOMMENDATIONS TO CONGRESS AND THE PRESIDENT.—No later than 24 months after the effective date of this Act, each covered agency shall submit a report to Congress and the President—

(1) detailing how the agency has complied with subsection (c) and describing the reasons for any departure from the requirement to establish priorities to achieve the greatest overall net reduction in risk;

(2) recommending—

(A) modification, repeal, or enactment of laws to reform, eliminate, or enhance programs or mandates relating to human health, safety, or the environment; and

(B) modification or elimination of statutorily or judicially mandated deadlines,

that would assist the covered agency to set priorities in activities to address the risks to human health, safety, or the environment in a manner consistent with the requirements of subsection (c)(1);

(3) evaluating the categories of policy and value judgments used in risk assessment, risk characterization, or cost-benefit analysis; and

(4) discussing risk assessment research and training needs, and the agency's strategy and schedule for meeting those needs.

(f) SAVINGS PROVISION AND JUDICIAL REVIEW.—

(1) IN GENERAL.—Nothing in this section shall be construed to modify any statutory standard or requirement designed to protect human health, safety, or the environment.

(2) JUDICIAL REVIEW.—Compliance or noncompliance by an agency with the provisions of this section shall not be subject to judicial review.

AGENCY ANALYSIS.—Any analysis prepared under this section shall not be subject to judicial consideration separate or apart from the requirement, rule, program, or law to which it relates. When an action for judicial review of a covered agency action is instituted, any analysis for, or relating to, the action shall constitute part of the whole record of agency action for the purpose of judicial review of the action and shall, to the extent relevant, be considered by a court in determining the legality of the covered agency action.

Mr. ROTH. Madam President, I rise to urge my colleagues to support my amendment to encourage agencies to set risk-based priorities. This amendment incorporates the basic language in S. 291 which I introduced in January and which received bipartisan and unanimous support of the Governmental Affairs Committee. Such language is also in S. 1001, introduced by Senator GLENN.

This language has been modified slightly through negotiations with Senator GLENN and Senator JOHNSTON.

I ask unanimous consent to add the names to my amendment of Senator JOHNSTON and Senator GLENN.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROTH. Madam President, I ask unanimous consent that on the Roth amendment regarding risk-based priorities, there be 30 minutes for debate, to be equally divided in the usual form, and that no second-degree amendments be in order.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. ROTH. Madam President, this amendment would significantly improve upon the current section 635 of S. 343, and it would clarify to the agencies what is expected of them regarding priority setting.

My amendment provides an effective date by which the agencies would set priorities to ensure they achieve the greatest overall risk reduction.

It also defines certain terms such as comparative risk analysis, and most serious risk, to reduce ambiguity about their requirements.

My amendment also lists covered agencies to which this requirement applies.

This amendment will also ensure that the risk study is based on some science. The comparative risk analysis would have to meet the standards for risk assessment, risk characterization, and peer review already provided in S. 343.

The amendment also makes clear that the comparative risk analysis across Federal agencies is institutionalized in agency practice. It is not a one-time event.

Instead of specifying a particular scientific body to conduct a comparative risk analysis, the amendment allows OMB to consult with OSTB in arranging the comparative risk study across Federal agencies.

Madam President, I would like to emphasize that I think it is critically important that we allow full public participation through the risk priority-setting process, and that this amendment assures an open process, allows public comment, and requires that policy judgments in the risk study be separated from scientific determination.

In sum, this amendment will allow Members to be confident that the agencies will use the results of the comparative risk analysis in a meaningful way. It will help ensure that we generate or obtain greater risk reduction at less cost.

Madam President, I would like to take some time to speak about the need for this amendment and what it would require. I believe that setting risk-based priorities offers the best opportunity to allocate rationally the resources of both the government and the private sector to protect human health, safety, and the environment.

With this tool of comparative risk analysis, we can make our health, safety, and environmental protection dollars go farther, providing greater overall protection, and saving even more lives than the current system.

The purpose of my amendment is to, one, encourage Federal agencies engaged in regulating risk to human health, safety, and the environment, to achieve the greatest risk reduction at the least cost practical; two, promote the coordination of policies and programs to reduce risk to human health, safety, and the environment; three, promote open communications among the Federal agencies, the public, the President and Congress regarding environmental health and safety risks and the prevention and management of those risks.

There is widespread support for setting risk-based priorities by many distinguished experts. As the blue ribbon Carnegie Commission panel noted in its report, ''Risk in the Environment,'' the economic burden of regulation is so great and the time and money available to address the many genuine environmental and health threats so limited, that hard resource allocation choices are important.

In the same vein, in 1995, National Academy of Public Administration report to Congress entitled ''Setting Priorities, Getting Results,'' recommends that the Environmental Protection Agency use comparative risk analysis to identify priorities, and use the budget process to allocate resources to the agencies priorities.

The NAPA report recommends that Congress ''could enact specific legislation that would require risk-ranking report every 2 to 3 years. Congress should use the information when it passes environmental statutes or reviews EPA's budget proposals.''

A national comparative risk analysis also was one of the chief recommendations of the Harvard Group on Risk Management Reform in their March 1995 report ''Reform of Risk Regulation: Achieving More Protection at Less Cost.''

Justice Steven Breyer has emphasized the need for risk-based priorities in his outstanding book ''Breaking the Vicious Circle: Toward Effective Risk Regulation.''

Finally, I should note that this idea has its roots in two seminal reports, ''Unfinished Business'' (1987) and ''Reducing Risks.''

To provide greater protection at less cost, I believe the Federal Government must systematically evaluate the threats to health, safety and the environment that its programs address, and determine which risks are the most serious, most amenable to reduce in a cost-effective manner.

This amendment requires each designated agency to engage in this evaluation among and within the programs it administers to better enable the President and Congress to prioritize resource agencies. The risk addressed by all of the designated agencies would be evaluated and compared.

Now, the purpose of these analyses is not to dictate how the government uses its resources but to provide Congress and the President with the information to make better informed choices.

These analyses will be useful for identifying unaddressed sources of risk, risks borne disproportionately by a segment of the population, as well as research needs.

This information will foster a clear reasoning for regulating in one area over another, or allocating resources to one program over another.

Finally, conducted in the public view, these analyses are likely to enhance public debate about these choices and ultimately create greater public confidence in government policy. Hard data will form the underpinnings of the analysis.

Public values must be incorporated when assessing the relative seriousness of the risk and when setting priorities. After all, scientific data alone cannot say which of the following is at greater risk or which should be addressed first. Neurological damage, heart disease, birth defects, a plane crash, or cancer.

The comparative risk analysis should be conducted in such a way that public values are asserted and considered. This will require including public input and the comparative risk analysis. When the analysis is completed, it should be clear to the public and the policy makers which part of the risk comparison reflects science and which part reflects value.

To encourage the use of risk-based priorities, my amendment requires not only that each agency set risk-based priorities for its programs, but also for the OMB to commission a report with an accredited scientific body, to study the methodologies of comparative risk analysis and to conduct such an analysis to compare risk across agencies.

The priorities identified must be incorporated into the agency budget, strategic planning, regulatory agenda, enforcement, and, as appropriate, research activities. When submitting its budget request to Congress each agency must describe the risk prioritization results and explicitly identify how the requested budget and regulatory agenda reflect those priorities.

Subsection (d) requires the Director of the Office of Management and Budget to have an accredited scientific body conduct a comparative risk analysis of risks regulated across all agencies.

Because comparative risk analysis is still a relatively new science, particularly when used to compare dissimilar risks, subsection (d)(4) requires that, even while the comparative risk analysis is being conducted, a study be done to improve the methods and use of comparative risk analysis. The study should be sufficient to provide the President and agency heads guidance in allocating resources across agencies and among programs to achieve the greatest degree of risk prevention and reduction.

Subsection (e) requires each covered agency to submit a report to Congress and the President no later than 24 months after the date of enactment of the act, and every 24 months thereafter. The reports should describe how the agencies have complied with subsection (c) and present the reasons for any departure from the requirement to establish priorities. The reports should identify the obstacles to prioritizing their activities and resources in accordance with the priorities identified. At this time, each agency should also recommend those legislative changes to programs or statutory deadlines needed to assist the agency in implementing those priorities.

This report back to Congress is a very critical element in readjusting the Federal Government's priorities so that we can truly achieve the greatest degree of protection for health, safety and the environment with our resources. Congress needs this information to make the necessary changes.

Madam President, we all know that this is a time of limited budgets and economic uncertainty. I believe that most of us recognize the need to reduce the regulatory burden that costs the average American family about $6,000 per year. But at the same time, the public highly values a clean environment, safe workplaces, and safe products. And I must add, that I deeply share these values. I am an environmentalist—proud to be an environmentalist. I want to reduce unduly costly regulations, but still ensure that important benefits and protections are provided. So the goal I seek is smarter regulation.

This amendment will promote smarter regulation. It will provide much-needed reform, not rollback. I ask my colleagues on both sides of the aisle to support this language—as they have done in S. 291 and S. 1001.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Madam President, I rise to support this amendment by my friend from Delaware, our committee chairman. I think he is doing a service by proposing this amendment.

He recognizes we cannot do everything. We do not have money enough to do everything we would like to do. We are trying to reform regulations. We are trying to cut back on regulations, onerous regulations. At the same time, what he is addressing is, even where we are trying to make serious approaches to matters like health and safety and so on, where we know we should be doing something in setting new standards for the whole Nation and for every single person, we will not have money enough to do all the things people out there would want done. What he is saying is we have to prioritize these.

How do you do that? How do you make sure you get the greatest good out of every dollar that we spend on health and safety matters? There were a couple of key words there. This is a young science. That is exactly what it is. This comparative risk analysis is a fairly young science and it is a new methodology that is being put forward in how to deal with this. Most scientists who are involved with this, I believe, feel it has tremendous promise and can really guide us into doing a better job of setting our priorities at the Federal level.

It can also tell us some things we should not do, by setting these priorities. It is not just to say we are going to try to do everything so now we will set the priorities of one, two, three, four; how we do these things and include everything in just because somebody came up with the idea. Comparative risk analysis can also say it is going to cost you so darned much to do this, or something else, we just cannot do that. So we would be better off taking that money and do overall more good in the long haul by spending that amount of money on something else, or two or three other things that might improve health and safety or whatever.

So I am glad to support this. I believe I was added as a cosponsor a few moments ago. I think the distinguished author of this amendment asked I be included. If not, I do wish to be included as a cosponsor on this. I am glad to support it. I do not know of any opposition. I do not know whether the Senator from Louisiana wants to speak on this or not, but after he has had time to make remarks, I would be prepared to accept the amendment on our part.

The PRESIDING OFFICER. The Senator from Ohio is listed as a cosponsor.

Mr. GLENN. I thank the Chair.

Madam President, I yield whatever time the Senator from Louisiana needs.

Mr. JOHNSTON. Madam President, I commend Senator ROTH, not only for the amendment, but the spirit of compromise that has made this amendment possible. It shows what we can do. Senator ROTH has contributed so much to this whole bill and the whole issue of risk analysis and a risk assessment and

regulatory reform. This is but one additional indication of that.

The amendment, as offered, enables but does not require participation by the National Academy of Sciences in developing methodologies for comparative risk analysis. It applies to a finite list of agencies who would be encouraged to adopt risk-based priorities, and will ensure that risk studies are based on sound science.

Madam President, it is a good amendment. I support it. I am glad to be a cosponsor of it. And, again, I congratulate Senator ROTH for his leadership in this area.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Madam President, I thank my distinguished colleagues, the Senator from Ohio and the Senator from Louisiana, for working with me to amend this proposal so it was acceptable on both sides of the aisle.

I will be frank. I think it is a critically important amendment. I think we must, if we are going to accomplish the good we all desire, prioritize across agencies and within agencies. This will help enable us make better use of the resources that are available to make the quality of life better for the American people.

Madam President, I urge acceptance of the amendment.

The PRESIDING OFFICER. Do the Senators yield back their time on this amendment?

Mr. GLENN. Madam President, all time is yielded back on this side.

Mr. ROTH. I yield back my time.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1507), as modified, was agreed to.

Mr. ROTH. Madam President, I move to reconsider the vote.

Mr. GLENN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROTH. Madam President, I make a point of order a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1516 TO AMENDMENT NO. 1487

Mr. JOHNSTON. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON] proposes an amendment numbered 1516 to amendment No. 1487.

Mr. JOHNSTON. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 25, line 19, strike out ''180 days'' and insert in lieu thereof ''one year''.

Mr. JOHNSTON. Madam President, the Senator from Ohio [Mr. GLENN] pointed out day before yesterday a real fault with this bill, which was that the provision on page 25 of the so-called Dole-Johnston amendment relating to health, safety, or emergency exemptions from the cost-benefit analysis, provides that a rule may go into effect immediately if an agency for good cause finds that conducting cost-benefit analysis is impractical due to an emergency or health or safety threat that is likely to result in significant harm to the public or natural resources. But under that rule, not later than 180 days after the promulgation of such rule, the agency must comply with the subchapter; that is, they must complete the cost-benefit analysis, and under another section of the bill can complete a risk assessment if that is required.

Madam President, 180 days, as the Senator from Ohio pointed out, simply is not enough time to get this done. This amendment extends that period to 1 year. So that, if there is a threat to the public health, safety or the environment, or if there is any kind of emergency, the agency can promulgate the rule, get it out, put it into effect immediately upon the declaration that they do not have time to do otherwise. This would give them then the year to do the cost-benefit or the risk analysis.

Keep in mind also that under other provisions of this bill cost-benefit analysis and risk assessment may be done in such form as is appropriate to the circumstances; that is, it can be done informally sometimes. Under some circumstances, for example, scientific reports which had been peer reviewed could be used and put into the record in lieu of conducting a brand-new peer review risk assessment. So we believe this would be enough time appropriately to finish such a review.

I want to thank the Senator from Ohio for pointing this out. It will make this a much better bill.

Mr. GLENN. Madam President, I think this certainly is a move in the right direction. We discussed this informally a couple of days ago. I hope the year is adequate. I guess if we are discussing this again I might suggest a little longer time or at least put a waiver in for the President or something, and, if at the end of the year they really just cannot do it in that period of time, that the President be granted a waiver authority in that event. That would cover all bases it seems to me for the health and safety for all of our people.

But certainly the doubling of time from 180 days to 365, to a full year, is a step in the right direction. I think by far the greatest percentage of cases this would certainly cover. They could do the analysis and the assessments and all the things that are required within that period of time.

So I would be prepared to accept this. I have a little bit of doubt in my own mind as to whether 1 year covers all of the situations we might run into without having a Presidential waiver at the end of that in case they were really up against it in some analysis.

I do not know whether the author of this, the Senator from Louisiana, would consider granting the President a waiver on the end of that. But in any event, I am prepared to accept the 1 year.

Mr. JOHNSTON. Madam President, I think the Senator's suggestion is a good one which I think we ought to move forward with in the conference committee. I will point out that there is nothing here that let us say they could not get done in a year. There is nothing in this language that says it is only a one-shot deal. They can put forth another major rule at the end of that year and start the 1-year process all over again. So the emergency is really protected by the fact that it says that you can. But in any event, I would be more comfortable with some kind of Presidential waiver. I think we could work on that between now and conference.

Mr. GLENN. Good. I think with that understanding, I am prepared on our side of the aisle to accept this amendment. I think it is good with the length of time. It will protect the health and safety and protect everybody.

Mr. ROTH. Could I ask the distinguished Senator, what is the understanding?

Mr. GLENN. Just that we work further. The Senator from Louisiana is extending the time period from 180 days to 1 year, where that might be necessary to go back. And I mentioned the other day that the 6 months is hardly enough time to do another complete analysis the way these risk assessments and analyses go, and suggested that we lengthen that out to a year. This would be on a re-analysis. The Senator from Louisiana agreed with that.

I would just question whether there might be some cases—I think they would be rare—where we require really more than a year because some of these things in the original or in the first instance takes several years, 4 or 5 years sometimes, to work out all the rules and regulations. But I think in most cases it would be covered by the 1 year.

I am happy to go along with that. What we were discussing was putting something in this also, if at the end of a year there was still a health and safety matter that was still being worked out, to give the President a waiver authority to go beyond that 1-year period. The Senator from Louisiana was pointing out also that the President could introduce a whole new process. I would not think that would be necessary.

Mr. ROTH. I would say that I can support the amendment proposed by

my distinguished colleague from Louisiana. I would certainly be happy to look at the suggestion from the Senator from Ohio. I think it is important that our process be realistic, that we do not expect the impossible from the agencies.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the amendment of Senator from Louisiana.

The amendment (No. 1516) was agreed to.

Mr. JOHNSTON. Madam President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GLENN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Madam President, while the majority leader is on the floor, I would like to send an amendment to the desk and see if we can deal with this at this time.

AMENDMENT NO. 1517 TO AMENDMENT NO. 1487

(Purpose: To delete the section on ''Requirements for Major Environmental Management Activities'' relating to cleanups under the Solid Waste Disposal Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, and other similar activities)

Mr. JOHNSTON. Madam President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Louisiana [Mr. JOHNSTON], for Mr. BAUCUS, for himself, Mr. JOHNSTON, and Mr. LAUTENBERG, proposes an amendment numbered 1517 to amendment No. 1487.

Mr. JOHNSTON. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all of section 628 (on page 42 beginning at line 3 strike out all through line 13 on page 44) and renumber section 629 as section 628.

On page 73 in the table of contents for SUBCHAPTER II—ANALYSIS OF AGENCY RULES, replace ''628. Requirements for major environmental management activities'' with ''628. Petition for alternative method of compliance.''

On page 57, lines 6 and 7 strike out the phrase ''or a major environmental management activity''.

Mr. JOHNSTON. Madam President, this is the amendment which removes from the bill the environmental cleanup, or so-called Superfund activities.

I ask for the majority leader's attention on this matter because we talked about that this morning. I understand that the majority leader may be willing to withdraw the Superfund provisions from the bill. I also understand that Senators may prefer it be withdrawn by unanimous consent rather than have a vote on it. If that is possible, we would be delighted to have that done at this time. That would avoid the debate and the vote.

UNANIMOUS-CONSENT AGREEMENT

Mr. DOLE. Madam President, if I could come back to that in just a moment, I think we are about to get a consent agreement here. The Democratic leader is on the floor.

First, let me indicate that after discussion with the Senator from Louisiana this morning, I did, as I indicated, have a meeting with the distinguished Democratic leader, Senator DASCHLE, with reference to the cloture motion and the cloture vote.

Obviously, we both have the same interest. We want to finish the bill. We do not want to shut off debate, but we do not want delay on either side—either side. And I regret not having a chance to indicate to the leader personally that the cloture motion would be filed last night, or to the managers. I was at home watching on C–SPAN the reaction of Senator GLENN and others.

So what we have agreed to, and I will now propound that request—and then the Senator from South Dakota may have a comment—I ask unanimous consent that the cloture vote scheduled to occur on Friday be postponed to occur on Monday at a time to be determined by the two leaders but not before 5 p.m.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. Is there objection?

Mr. DASCHLE. Madam President, reserving the right to object, and I will not object, I would first clarify with the majority leader that first-degree amendments would still be in order at least as to their filing up until the close of business on Friday. Is that the understanding of the majority leader?

Mr. DOLE. That is correct.

Mr. DASCHLE. I think that would accommodate a lot of the needs of many Senators on our side. As we indicated last night, many of us felt that the filing of the cloture motion was unfortunate, premature, but I think this will allow us to keep working in a meaningful way.

I think it is clear that both sides, Democrats and Republicans, want to accomplish a good deal with regard to regulatory reform, and I think there is a lot of progress that has been made. We have raised a number of issues. While they have not been addressed and resolved to our satisfaction in some cases, these amendments have been proposed in good faith and have raised very important issues.

I am hopeful we can continue to do that today. I am hopeful that at some point between now and Monday we will have the opportunity to debate the Democratic substitute, and we will simply take a look on Monday as to where we are and how much progress we have made as to what our position on cloture will be. But this certainly accommodates the need to allow Senators to come to the floor, to propose their amendments, and to have good debate. I think in many cases that can be done with short timeframes and perhaps some without rollcall votes. I would hope we could continue negotiations as well. I think we have made progress in many areas off the floor, and I hope that effort could continue as well. So I think the majority leader has advanced the effort here substantially, and I would encourage support of the motion.

Mr. JOHNSTON. Madam President, will the minority leader yield for a question?

The PRESIDING OFFICER. Does the minority leader yield?

Mr. DASCHLE. I will be happy to yield. The floor is the majority leader's.

Mr. DOLE. That is all right; I will be happy to yield for a question.

Mr. JOHNSTON. I had urged the majority leader today not to go forward with the motion. I am glad he has delayed it. Does this delay meet with the full approval of the minority leader?

Mr. DASCHLE. I say to the distinguished Senator from Louisiana, who has probably had as much to do with this bill as anybody, this is a very important step procedurally. I think, as I said, this allows us to go forth with additional amendments, perhaps with the substitute, so I think it accommodates the needs of Senators on both sides, and I am enthusiastic about the change that is proposed here today.

Mr. JOHNSTON. I thank the minority leader, and I thank the majority leader for his willingness to accommodate this legislative process.

The PRESIDING OFFICER. Is there objection to the request? If not, the Chair hears none, and it is so ordered.

Mr. DOLE. Madam President, let me further ask, following along what the Senator from South Dakota suggested, that first-degree amendments may be filed up to the close of business on Friday, July 14, or if the Senate recesses prior to that time, early, they may be filed up until 4 p.m. on Friday, even if we were out of here by 1 o'clock.

So let me also indicate that I appreciate the cooperation, and I believe that there is a determined effort on both sides to pass a good regulatory reform bill. That is my conclusion after visiting with the Democratic leader and after visiting with the Senator from Louisiana [Mr. JOHNSTON].

As I have indicated before, what the leader is trying to do, and the leader has that responsibility, is move the program, and I would like to insert in the RECORD at this point a tentative agenda between now and the time we leave here in August. Hopefully it will be August when we leave here for recess. And I will ask to have that printed in the RECORD.

I will just say, to highlight it, it has us completing this bill on Tuesday, and then we have Bosnia. And then we have appropriations next Thursday and Friday, and then the Ryan White provision on July 24, the gift and lobbying bill on that date if possible. Then we get into the State Department and foreign ops authorization bill, which will take us up to July 29, and then the

DOD authorization and DOD appropriations bills would take us up until August 5, and then begin welfare reform on August 7. And whenever we concluded our business on welfare reform, the recess would begin.

Now, all these things are, of course, subject to change because if we do not keep up on the schedule, it obviously pushes us further into August. If everything worked as we would like it to work, it is possible we could begin the recess even before August 12.

I ask unanimous consent that this be printed in the RECORD so that everybody will have a chance to look at it carefully and then start complaining to the leader about it.

There being no objection, the schedule was ordered to be printed in the RECORD, as follows:

PROPOSED LEGISLATIVE SCHEDULE JULY–AUGUST

WEEK OF JULY 10

Regulatory reform.

WEEK OF JULY 17

Regulatory reform through Tuesday.
Tuesday p.m.—Bosnia.
Wesnesday—Bosnia.
Thursday—Available Appropriations bills.
Friday—Available appropriations: Military Construction/Legislative/Energy and Water.

WEEK OF JULY 24

Monday—Ryan White bill/Gift lobbying bill.
Tuesday through Friday—Start State Department reorganization bill and Foreign Operations Authorization.
Saturday session if necessary.

WEEK OF JULY 31—AUGUST 4

DOD authorization and DOD appropriations.
Saturday session if necessary.

WEEK OF AUGUST 7[1]

Monday, begin welfare reform (or earlier if schedule permits).
Tuesday through Friday—Continue welfare reform and available appropriations bills or conference reports.
Saturday session possible to complete any items.

The PRESIDING OFFICER. In addition, the Chair would add the previous order will be so modified to reflect the 4 o'clock modification.

Mr. DOLE. With reference to the pending amendment, I will need to do some checking on that before I am in a position to respond to the Senator from Louisiana. In other words, the amendment pending would in effect take Superfund out of the——

Mr. JOHNSTON. That is right, environmental management activities, the whole section, just withdraw that.

Mr. DOLE. I assume there will be Superfund legislation this year, and so at that time we would address the issues that are removed from this bill.

Mr. JOHNSTON. I have heard from many of those Senators involved in the issue, all of whom are anxious to move forward with Superfund in their committee, and I think there is no hesitation in moving forward. I was told this morning that Senator SMITH, who chairs the subcommittee on Superfund, is anxious to move forward but did not want to vote on this; he would rather have it done by the majority leader by unanimous consent. That is the reason I asked for the majority leader's attention.

Mr. DOLE. Right. If I can just have a few minutes to clear that, I did not—we did discuss that this morning at our 8:30 meeting. We did discuss it briefly with the Senator from Louisiana. It is a very important provision. There are some of our colleagues who want to leave it as it is, others who have mixed feelings on it—in fact, some who would probably vote to remove it. The question is how many would vote to remove it. That is sort of the bottom line. If I could have a few moments to check with two or three people.

Mr. JOHNSTON. Madam President, I think it may be appropriate to temporarily lay this aside unless someone has any problem with it, and I think Senator BOXER is ready to move with her amendment under a time agreement. So is there any problem with temporarily laying this aside?

Madam President, I ask unanimous consent that we temporarily lay the pending amendment aside.

The PRESIDING OFFICER. Is there objection?

Mr. ROTH. Reserving the right to object——

Mr. DOLE. I would like to dispose of the pending amendment if the Senator will just give me a few moments.

Mr. JOHNSTON. I withdraw that request.

Mr. DOLE. And either have a quorum or if somebody wanted to speak on some other—does the Senator from California wish to speak on another matter?

Mr. GLENN. She has an amendment, but she could start speaking on it.

Mrs. BOXER. I am waiting to introduce an amendment on mammograms.

Mr. DOLE. The Senator could start speaking on that.

Mr. GLENN. The Senator could start with the agreement that when he gets an answer back, she would be willing to yield the floor for that disposition.

Mrs. BOXER. If the Senator will make that into a unanimous-consent request.

Mr. DOLE. Let me suggest that as soon as we dispose of the amendment offered by the Senator from Louisiana, the Senator from California be recognized to offer an amendment.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. DOLE. The Senator can start speaking now.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California is recognized to begin speaking with the reservation that if the pending amendment is agreed to, we will then interrupt and do that, and then we will return to the Senator from California.

AMENDMENT NO. 1524

Mrs. BOXER. Madam President, thank you very much for that very explicit explanation of where we are in the process.

I want to thank my colleagues because I do think this is a very important amendment. It affects the women of this country and, of course, as a result of that, everyone in this country, because one of the tragedies that we face in America today is an epidemic of breast cancer. And the amendment that I will introduce at the appropriate time will merely say that a rule that is in process now which will set standards for mammograms will be able to move forward and not be subjected to this new bill.

Madam President, one in nine women are at risk of being diagnosed with breast cancer in her lifetime. Breast cancer is the most common form of cancer in American women and the leading killer of women between the ages 35 and 52.

In 1995, an estimated 182,000 new cases of breast cancer will be diagnosed, and 46,000 women will die of the disease. Just in the year 1995. We lost 50,000 brave men and women in the Vietnam war, and the country has suffered ever since in grief. Every year we lose 45,000 women, approximately, from breast cancer.

We do not know what causes breast cancer, although we are making progress on that front. We do not know how to prevent breast cancer, but the research that is moving forward hopefully will lead us in the right direction. We certainly do not have a cure for breast cancer, although, again, we are making progress. We do have, however, a couple of tools. Those are breast self-examination, doctor examination, and mammography. Those are the only tools that women have to detect breast cancer early, when it can be treated with the least disfigurement and when chances of survival are the highest.

What does that have to do with the amendment that I will be introducing? And I am very proud to say, Madam President, that this amendment is cosponsored by Senators MURRAY, MIKULSKI, LAUTENBERG, BRADLEY, FEINSTEIN, DORGAN, KENNEDY and REID. What does the tragic history of breast cancer have to do with the amendment that I am going to offer? It is directly related. The quality of a mammogram can mean the difference between life or death. If the mammogram procedure is done incorrectly, if a bad picture is taken, then a radiologist reading the x ray may miss seeing a potentially cancerous lump.

Conversely, a bad picture can show lumps where none exist and a woman will have to undergo the trauma of being told she may have a cancer, a situation known as a ''false positive.'' Now, truly, I do not know many women of my age, younger or older, who have not had the trauma of a false reading. It is very common.

[1] All items must be completed prior to the start of the August recess. As soon as these items are completed, regardless of the day, the Senate will begin the recess.

We need to perfect mammograms. But a false positive is obviously nothing compared to a radiologist missing a cancer. To get a good-quality mammogram, you need the right film and the proper equipment. To protect women undergoing the procedure, you need the correct radiation dose. So it is not a mystery. It is not a mystery as far as what we need to do to get better quality mammograms.

I am very proud to say that in 1992, Congress passed the Mammography Quality Standards Act in order to establish national quality standards for mammography facilities. Now, I want to make a point about that. In this Republican Congress we hear a lot of talk about how everything should be given to the States. Why do we need national standards for this? Why should we have national standards for that?

Well, let me tell you honestly, I have never been at a community meeting in my life—and I have been in public life for a very long time—where someone has come up to me and said, ''Senator, you are doing too much to protect the food supply. You are doing too much to protect the water. You are doing too much to make sure that mammography is safe.'' On the contrary, it is, ''Senator, I am worried about the safety of the water I drink. I am worried about the safety of the food that we eat. I am concerned about pesticide use, bacteria. What are you going to do to make it better?''

And clearly, when a woman is misdiagnosed and a doctor misses the cancer because of a mammogram that was either improperly done or improperly read—we hear it all the time. And we all know cases where a cancer that could have been detected early was not detected because the quality of the mammogram or the quality of the reading simply was not high enough.

So we passed the Mammography Quality Standards Act in order to establish national quality standards for mammography facilities. At the time, both the GAO and the American College of Radiology testified before Congress that the former patchwork of Federal, State and private standards were inadequate—inadequate—to protect women. So we are not talking about something here that was not studied. The GAO and the American College of Radiology testified before Congress that the patchwork that existed before this act, the Mammography Quality Standards Act, was inadequate. It was inadequate to protect women.

There were a number of problems at mammography facilities: poor-quality equipment, poorly trained technicians and physicians, a lack of regular inspections, and facilities which told women they were accredited when, in fact, they were not accredited. And women walked in for their mammograms. And every woman who had this experience can say that you hold your breath until you get the results. And many women breathed a sigh of relief and said they were cancer free, when in fact they were not cancer free because of the inadequate facilities.

If this regulatory reform bill passes, the final rule that implements the mammography act that we passed could be delayed for years. Let me repeat that. And I hope my friend from Louisiana hears it and I hope the majority leader hears it. And this is not coming from one Senator; it is coming from the people who know. The FDA says to us clearly that if this regulatory reform passes as it is, the final rule implementing the Mammography Quality Standards Act, which is due out in October, could be delayed for years.

My friends, we cannot let this happen. Under the interim rules, the FDA has already certified over 9,000 facilities as providing quality mammography services. If final rules are delayed, then women will no longer be able to rely on the good standards we have put in place.

And that is why the amendment that I am introducing with many of my colleagues and my primary coauthors, Senator MURRAY from Washington—and I look forward to her statement following mine—the amendment simply says that the Mammography Quality Standards Act is not a major rule and is therefore exempt from the requirements in the regulatory reform bill, period.

Anyone who gets up here and says, ''You don't need the Boxer-Murray-Mikulski legislation, we cover it,'' I will look that person in the eye and tell them they are playing Russian roulette with the women of this country, because the FDA has told us we need this Boxer-Murray amendment in order to make sure that this rule moves forward.

So any Senator who stands up and starts questioning this Senator about it is going to have to hear it repeated over and over and over again, as many times as it takes. We jeopardize the health of the women of America if we do not adopt this amendment.

Some are going to say the Mammography Quality Standards Act does not meet the $100 million threshold established by the bill for major rules and, therefore, it would not be affected and we do not need the Boxer-Murray amendment. FDA believes otherwise, and I would rather believe them than some Senator who does not know this issue.

We know already the cost of this rule is about $98 million, dangerously close to the $100 million threshold. With inflation and somebody jacking around the numbers, it could easily go to $100 million. Some may argue that there are health and safety exemptions in the cost-benefit analysis and risk assessment portions of the bill to protect the Mammography Quality Standards Act. In fact, those exemptions apply only when it is ''likely to result in significant harm to the public.''

The FDA does not believe this exemption would include the mammography quality standards. Moreover, since the bill does not define the term ''significant harm,'' how can we tell if it would apply or not? If a woman has her mammogram read by someone who is poorly trained in mammography, is it of significant harm to the public if she dies? It is certainly significant to that woman if that person fails to detect a cancerous lump, and to her children and to her family. And if it happened to a Senator's wife, it sure would be significant and they would be rushing to the floor to exempt this rule.

I say it is significant. This is such a significant subject—breast cancer—that we should make sure we are doing the right thing and exempt this rule.

Let us concentrate on what we do know. Mammography is the only test we have to detect breast cancer early when survival rates are the highest. We know not enough women, especially older women, have this test. That is why there has been extensive public information campaigns encouraging women to get the test, and, therefore, when they do get the test, we need to know that the mammogram they are getting is accurate and that the person who is reading the mammogram understands how to read the mammogram, and that is why we need this rule, to move forward, and that is why we need the Boxer-Murray-Mikulski amendment.

It is straightforward. It says that quality mammography is so important that we should not do anything to prevent the FDA from moving forward and continue to implement the Mammography Quality Standards Act. I certainly hope we will have broad support for this amendment when I do offer it.

Mr. President, I ask unanimous consent that Senator BUMPERS be added as a cosponsor of the amendment.

The PRESIDING OFFICER (Mr. KYL). Without objection, it is so ordered.

Mrs. BOXER. As I understand the agreement, I was entitled to speak until there was an interruption. I ask unanimous consent that Senator MURRAY be allowed to make her comments now, with the understanding that if there is, in fact, an interruption regarding the Superfund amendment, we will lay this matter aside and come back to it immediately following it.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Washington is recognized.

Mrs. MURRAY. Thank you, Mr. President. I thank my colleague from California, Senator BOXER, for this amendment and for her very well-stated words on this issue. I hope that all of our colleagues took the time to listen to what she had to say. She stated it very clearly for all of us why we need this amendment to exempt the Mammography Quality Standards Act regulations from the requirements of S. 343.

I think we all know that breast cancer has taken the lives of far too many women, and the long list of those who have died include many of my own friends. I am sure everyone on this

floor knows of someone who has been touched by breast cancer. It is a growing health concern and problem in this Nation, and it is a great threat to women's health. It is estimated that during the 1990's, nearly 2 million women will be diagnosed with breast cancer and 460,000 women will die from this deadly disease. I assure everyone listening that will include people you know—your sisters, your mothers, your daughters, your friends.

In 1992, Congress understood that and they passed the Mammography Quality Standards Act. The FDA is responsible for issuing regulations under that act to ensure that medical procedures for mammography exams are safe and effective and that mammograms are properly administered and interpreted.

Most of the regulations implementing the Mammography Quality Standards Act are due to be released October of this year. The regulations the FDA hopes to implement will set standards, as the Senator from California has said, for x ray film quality, requirements for staff, for reading and interpreting those x rays, and standards for recordkeeping. Those regulations will ensure that mammograms are done correctly and safely so that we can increase the chances of early detection.

Under the Dole bill, implementation of these quality controls in mammography will qualify as a major rule, either because they may cost $100 million to implement or because they may cause a significant impact on a substantial number of small entities. They will then be subject to the cumbersome, expensive and lengthy cost-benefit analyses and risk-assessment process.

At a time in this Nation when women are already confused by the mixed messages we receive about breast cancer and other diseases affecting us, I believe this bill sends yet another disturbing message: That Congress will demand that the FDA choose the lowest-cost alternative by placing a dollar value on a woman's life.

We cannot let that happen. The potential positive effects of these regulations on the lives of women in this country are substantial. Improving the quality of mammography translates directly into early detection of breast cancer. Early detection of breast cancer increases the likelihood of successful treatment and survival. Delay in issuance of these regulations will cost women's lives.

Mr. President, my colleague from Illinois, Senator SIMON, summed up a simple and important message that is being lost in this debate on regulatory reform. He said what we need in this field is some balance, and I could not agree more. The American people want their elected officials to reduce wasteful and unnecessary spending and make their Government work efficiently. They want a balanced approach to decisionmaking about regulations. They do not want costs to be either the only or primary reason for a regulation. They want us to manage their tax dollars prudently, while also protecting their health and their environment.

The amendment before us on mammography takes a step toward protecting their health. I hope that I can support eventually a comprehensive bill that provides true Government efficiency and rational decisionmaking. Unfortunately, S. 343 as now drafted does not do this.

I urge my colleagues to look carefully at the amendment before us and to support it. I can assure all of you that women across this Nation are disturbed by the mixed messages they have received about mammographies over the last few years. One day we are told if you are over 40, have one every 5 years. Then we are told, if you are over 50, have one every year. Then we are told you do not need to have one until you are a certain age.

Those messages are disturbing because they will cause women not to have mammograms. And when we go in to have one, we want to know that it is safe, effective, and we can be assured of that.

This amendment will assure that this bill will not undo the important progress that we have made on this issue in the past several years. I strongly urge all of my colleagues to accept this amendment so that we can move to a better bill.

Thank you. I yield the floor.

Mrs. BOXER. Mr. President, at this time, I would rather withhold the rest of my debate until I get to lay down the amendment.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that coauthors be added to the pending Baucus amendment as follows: Senators JOHNSTON, LAUTENBERG, BRADLEY, MURRAY, FEINSTEIN, REID, MOYNIHAN, GLENN, and KENNEDY.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GLENN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GLENN. Mr. President, we were discussing the proposal by the Senator from California, Senator BOXER. I wanted to rise in support of the concerns she has expressed here. I think they are very valid. Yesterday, when we were talking about different areas that would be affected if we did not change the April 1 deadline, mammography was one of those things that would be affected and would have the potential of being delayed for almost an indefinite period, if they were forced to go back and start the same risk assessment, the same analysis program, all over again.

Some of the pending rules that would be affected we listed yesterday, such as lead soldering, iron toxicity, a whole list of those. One was mammography. Let me read from a little summary of why we are concerned about this.

The Mammography Quality Standards Act of 1992, MQSA, requires the establishment of quality standards for mammography clinics covering quality of films produced, training for clinic personnel, recordkeeping, and equipment. MQSA resulted from concerns about the quality of mammography services that women rely upon for early detection of breast cancer. FDA is planning to publish proposed regulations to implement the MQSA.

The potential magnitude of these regulations is substantial, and that is what the distinguished Senator from California has been addressing.

Improving the quality of mammography translates directly into early detection of breast cancer, and early detection of breast cancer increases the likelihood of successful treatment and survival. An intramural was published December 21, 1993. This publication of proposed regulations—in other words, follow-on—is planned for October 1995, but it would not be exempt since that occurs after the April 1 cutoff time period that is in the legislation now. So that would mean that under S. 343 the whole process would probably be started all over again.

That is why I do not think we want to see that happen. I do not think we want to see the standards delayed unnecessarily and set back the rules and regulations and place untold thousands of women in additional danger.

I certainly rise to support the proposal made by the distinguished Senator from California.

In addition to that, I do not believe that the letter from the Secretary of the Department of Health and Human Services was entered into the RECORD. I ask unanimous consent that the letter from Secretary Shalala, dated July 12, addressed to the minority leader, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF HEALTH
AND HUMAN SERVICES,
Washington, DC, July 12, 1995.

Hon. THOMAS A. DASCHLE,
Democratic Leader,
U.S. Senate,
Washington, DC.

DEAR SENATOR DASCHLE: It is estimated that 46,000 women die every year from breast cancer. It is the second leading cause of cancer death in women. Early and accurate detection can save thousands of lives.

The Mammography Quality Standards Act (MQSA) of 1992, enacted on October 22, 1992,

established quality standards for mammography. MQSA resulted from concerns about breast cancer and the quality of mammography services upon which women rely for early detection of breast cancer. The purpose of MQSA is to ensure all mammography done in this country is safe and reliable.

We have completed the first phase of this program. To complete implementation, we must issue final rules that will establish the full range of standards necessary for a national quality assurance program. These rules have been developed through extensive cooperation with the National Mammography Quality Assurance Committee, including five public meetings. The rules are scheduled to be proposed in October.

This proposal will include a number of the standards required under the statute, such as guidelines for radiologic equipment, consumer protection provisions, and breast implant imaging.

Improving the quality of mammography translates directly into earlier detection of breast cancer, which increases the likelihood of successful treatment and survival. Delay in implementation of the final rule due to the unnecessary and duplicative requirements that would be imposed by S. 343 will delay significant improvements in this life saving program. I urge you to ensure that the MQSA final rule be allowed to proceed without delay.

Sincerely,

DONNA E. SHALALA.

Mr. GLENN. She points out some 46,000 women die every year from breast cancer. It is the second leading cause of death in women, and thousands of lives can be saved if we go ahead and get the standards out, get going with these things, set standards for mammography, x rays, and all the other things that go into this.

The Mammography Quality Standards Act, enacted back in 1992, established some of these standards. The purpose of MQSA was to ensure that all the mammography that is done is safe and reliable, it does not cause more problems than it is trying to cure.

The first phase of all this program has been completed. To complete implementation we need the final rules, still, that will establish the full range of standards necessary for a national quality assurance program.

There has been extensive cooperation with the committee that is dealing with this, the National Mammography Quality Assurance Committee, five public meetings and a lot of witnesses, and the rules are scheduled to be proposed in October of this year.

The proposal will include a number of the standards required under the statutes, such as guidelines for radiologic equipment, consumer protection provisions, and breast implant imaging. Improving the quality of mammography translates directly into earlier detection and the likelihood of successful treatment and survival.

The delay in implementation of this final rule, due to the unnecessary and duplicative requirements that would be imposed by S. 343, because this does not meet the April 1, 1995, cutoff, will delay significant improvements in this life-saving program. So the Secretary urges the Senate to ensure that the MQSA final rule be allowed to proceed without delay. That is what the Senator from California does. That is the reason I rise to speak on behalf of her proposal.

PRIVILEGE OF THE FLOOR

Mr. GLENN. Mr. President, I ask unanimous consent that Lisa Haage be permitted privilege of the floor during consideration of S. 343.

The PRESIDENT pro tempore. Without objection, it is so ordered.

AMENDMENT NO. 1517

Mr. BAUCUS. Mr. President, I would like to speak in favor of the pending amendment. This amendment is a very simple amendment.

Essentially, it is to delete section 628 of the bill, that section now currently in the bill that makes specific changes to Superfund and other hazardous waste cleanup. Simply put, changes to Superfund, I believe, do not belong in this bill. It is as simple as that. This regulatory reform bill was considered earlier in the House, and in earlier versions, this section was not in the bill. Somehow, somebody later added in this section, section 628.

What does it do? Essentially, it says that all the Superfund provisions now also apply to regulatory reform.

I do not think that makes sense. That is a substantive change to a regulatory reform law. Much worse, Mr. President, in doing so—that is, including Superfund in regulatory reform—the net result is we would have a present bad situation made much worse.

Let me explain. If section 628 is enacted, that is, the provision in the bill which includes Superfund to the new cost-benefit and risk assessment provisions in regulatory reform, the Superfund program that currently exists in our country becomes much more complicated, not less.

All across the country hundreds of hazardous waste cleanups would be disrupted. They would be delayed. In some cases, they would be halted. If we can believe it, section 628 would actually make the present very complicated, very unfortunate and very disrupted Superfund program even slower, even more complicated, and much more bureaucratic than it already is.

I am reminded of the late sage of Baltimore, H.L. Mencken. He once said, for every complicated, complex problem there is a simple solution. It is easy. But it is usually wrong.

I cannot think of a better example of that statement of his. That is, Superfund reforms are very complicated problems. What is the simplest solution presented in this bill? It includes Superfund reform in regulatory reform. Simple—and it is wrong.

I do not want any person to misunderstand. Those that want to delete section 628 are not defending the status quo. We are not defending the present Superfund program. Far from it. The Superfund has plenty of problems. It must be corrected.

Let me remind my colleagues that Superfund was a hastily drafted law back in 1979. It was an immediate response to Love Canal. Like most hastily drafted laws, it does not work very well. It was not thought through. Therefore, it is inefficient, ineffective, and many too few cleanups and too many lawsuits.

There are currently 1,300 cleanup sites—roughly 40,000, but EPA says 1,300—down from 40,000 to 1,300. Mr. President, 15 years into the program, out of that 1,300 Superfund sites in our country—that is, cleanup of toxic waste—only 278 have been cleaned up. Mr. President, 15 years, out of 1,300, only 278 have been cleaned up. If we continue at this rate, we will finish the job by the year 2040. I might add, just in time for my 108th birthday.

Unfortunately, the program is slowing down, the present Superfund program. It is not speeding up, it is slowing down. It now takes almost 10 years to clean up an average site, and the cost is roughly $30 million per site, and about 30 percent of the money is spent not in cleanup costs but rather on litigation. When as much as 30 cents to the dollar goes to lawyers, Mr. President, I think we all think something is wrong with the program.

I bet that every Senator has his or her own frustrating personal experience with the Superfund—a site where studies have piled up for years, where delay has dragged on, where lawyers and accountants have made money hand over fist, and the local community is left holding the bag, and where people have become angry. They want, Mr. President, sites to be cleaned up so they can get on with their lives.

There are several steps that we should take to improve Superfund. First, we should establish an allocation system to fairly distribute the cost of cleanups among responsible parties. Current law does not do that.

We should reform the liability system so that small businesses and municipalities are not dragged into burdensome lawsuits.

We should improve cleanup standards and take better account of science, economics, and future land use.

And we should increase community involvement in the cleanup process. Right now, the communities are not involved enough in the early stage of Superfund. If they were, the program could work better because the local folks could say we want this site cleaned up to a higher standard for playground use but this other site cleaned up to a lower standard for industrial use. The communities, the local people, have a much better idea what that remedy selection should be.

There are other changes we should make to the program.

Each of the steps is a bit complex. Each requires tradeoffs. Each should be taken carefully. But each step is necessary.

This is why Superfund reform is a top priority of the Environment and Public Works Committee. Last year, the committee reported a bill that overhauled

Superfund from top to bottom, and this year the committee has had seven hearings, and the subcommittee chairman, Senator SMITH from New Hampshire, has proposed a sweeping set of reforms and plans to hold a markup very soon.

So the difficult work of rolling up your sleeves and getting the job done of reforming Superfund is well underway and is being undertaken the right way.

Unfortunately, section 628 does not advance the cause of reform. It sets it back. It takes us in the wrong direction. In a nutshell, section 628 subjects any Superfund cleanup or other so-called environmental management activity that costs $10 million or more to the risk assessment and cost-benefit provisions of the bill. That sounds pretty straightforward. But consider two points.

First, this would apply a different standard for risk assessment and cost-benefit analysis than exists under current law. So, all of the risk assessment, remedial investigations, feasibility studies and other analysis, and all that bureaucratic gobbledygook that has been done under current law is out the window. Go back to the beginning, this section says. Do it all over again.

Second, the new standard applies to hundreds of sites, including many sites where cleanup decisions have already been made and even sites where construction work has already begun.

Let me give an example. In my State of Montana we have the largest Superfund site in America, the Clark Fork River, the result of hundreds of years of large-scale copper mining. It stretches 120 miles from Butte, MT, to Missoula. It has 23 priority sites. Only two are cleaned up.

We have been working for years to get EPA to stop studying and start cleaning up. The studies have cost more than $50 million and now, after years of talk, we have a plan that is finally ready to go. EPA, the State of Montana, the people of Butte, and the responsible company, have agreed on innovative, cost-effective solutions at several spots along the Clark Fork River.

In Butte, for example, rather than remove lead contamination from the soil everywhere, it will only be removed at priority sites, where children live and play. And to make sure that children remain safe under the plan, they will be monitored. This solution makes sense. It is the most sensible way to do the job, and the citizens are anxious to get started. But this bill stops all that dead in its tracks. Montana's Governor, Marc Racicot, wrote me last Friday with this comment.

If it was necessary to undertake the kind of cost-benefit analysis and risk assessment called for in the bill for these response actions, given how long it would take to do this, the clean-up of these sites, if such clean-up occurred at all, would not occur until well into the 21st century.

This is all the sillier when one considers that EPA routinely prepares risk assessments and undertakes a form of cost-benefit analysis when it makes a decision.

So the cleanup at the Clark Fork will grind to a halt. The cleanup will stop until yet another study is completed. The families and children of Butte, Anaconda, Deer Lodge, Bonner, Lolo, Missoula, and all the other towns on the river that live with pollution, fish kills, and threats to drinking water for years longer will have to suffer. And if the cleanup standard established after these new studies is too low, the damage will be magnified. And all to no purpose, because the EPA has already done the work.

Let me give another example: The streamside tailings along Silver Bow Creek. Here, the State has just completed a detailed study of seven different options for cleaning it up and the people in the community have thought it through. Among other things, they will turn part of the site into a ''greenway'' with bike trails and hiking trails and picnic areas. But only one of the seven options is less than $10 million, the threshold under the bill, and that is the option of doing absolutely nothing. So any decision to clean up the site, even minimally, will require new cost-benefit studies to be repeated. Once again, the community's plan gets delayed and maybe even gets thrown out the window.

Jack Lynch, the chief executive of Butte-Silver Bow County, wrote me to express concern about another cleanup—Berkeley Pit. The pit is an open copper mine just outside of Butte, abandoned when the Anaconda Co. left town in the early 1980's. Mr. President, I wish you could see this abandoned pit. It is about a mile and a half wide. Every day it is filling up with about 6 million gallons of what you can loosely call water. In fact, it is a liquid so acidic it might burn your eyes out if you attempted to use it to wash your face. The water is so deep now, you can even see waves on a windy day, and if it is not stopped, it will threaten Butte's ground water. Despite these problems, the bill, the one pending before us, would force the people of Butte to endure more studies and more delay.

I can tell you, the people of Butte are up to their necks in studies. They would rather have something done.

Mr. President, I ask unanimous consent the letters from Governor Racicot and Chief Executive Lynch be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

OFFICE OF THE GOVERNOR,
STATE OF MONTANA,
Helena, MT, July 7, 1995.

Hon. MAX BAUCUS,
U.S. Senate,
Washington, DC.

DEAR SENATOR BAUCUS: I write to express concern over certain aspects of the Comprehensive Regulatory Reform Act of 1995, as introduced on June 21, 1995. In short, I am deeply concerned that the bill, if enacted into law, would frustrate response actions and restoration of the Upper Clark Fork River Basin NPL sites.

In order to explain the basis for my concern, a brief discussion of my understanding of the bill follows: Section 628 of the bill imposes requirements for major environmental management activities. The bill defines these activities to include response actions and damage assessments costing more than 10 million dollars pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act. Such activities must meet ''decisional criteria'' established under §624 of the bill. In order to ensure that the decisional criteria are met, an agency must prepare a cost-benefit analysis and risk assessment (the requirements for which are set forth in Subchapters II and III of the bill) for all such activities pending on the date of enactment of the bill or proposed after such date. However, the bill appears to give an agency some discretion for actions that are pending on the date of enactment or proposed within a year of such date. For these actions a cost-benefit analysis or risk assessment under Subchapters II and III need not be prepared, but an agency can use alternative analyses in order to determine that the decisional criteria are met. For all risk assessments prepared by an agency, even a non-Subchapter III risk assessment, §623 allows an interested person to petition an agency to prepare a revised risk assessment and then allows for judicial review of the agency's decision.

The decisional criteria of §623 envision two scenarios. The first scenario mandates that an agency determine 1) that the action's benefits justify its costs, 2) that the action employ ''flexible'' alternatives ''to the extent practicable,'' 3) that the action adopts the least cost alternative that ''achieves the objectives of the statute,'' and 4) that the action, if a risk assessment is required, ''significantly reduce risks'' or if such a finding can not be made, that the action is nonetheless justified and is ''consistent'' with Subchapter III (which sets forth requirements and standards for risk assessments). The second scenario is when an agency cannot make a finding that an action's benefits justify its costs. In this case, an action must meet all the other criteria identified above and an agency must prepare and submit to Congress a written explanation of its decision.

Section 624 specifically states that its requirements ''shall supplement and not supersede any other decisional criteria. . . .'' Section 628, regarding major environmental management activities contains this same statement.

As you are aware, EPA and the State of Montana are presently engaged in a cooperative effort to determine and implement appropriate response actions to address adverse impacts to human health and the environment at the Upper Clark Fork Basin NPL sites. As you are also aware, response actions have been completed, are ongoing, have been proposed, and are in the RI/FS developmental stage.

It is important to note that §628 would apply to virtually all response actions, even ongoing response actions. Section 628 applies to ongoing response actions unless ''construction or other remediation activity has commenced on a significant portion of the activity'' and it is ''more cost-effective to complete the work'' than to undertake the analysis called for by §628 or the delays caused by undertaking the analysis will ''result in significant risk to human health or the environment.'' This exclusion is so narrowly drawn that almost all response actions, including ongoing response actions at the Clark Fork sites, would be subject to the requirements of §628.

For a pending action, which presumably means either an ongoing response action or a response action for which there is a ROD, or

for a response action that is proposed within a year after the bill's enactment, which presumably means a proposed plan on a ROD, an agency apparently does not have to prepare a risk assessment or a cost-benefit analysis pursuant to the requirements of the bill. Rather, an agency may use alternative methodologies to make such a determination.

Thus, at a minimum, the requirement to prepare a cost-benefit analysis and risk assessment will apply to actions proposed more than a year after enactment. If enacted in this session, the bill would likely impose these requirements for several response actions. For example, the response actions for the Clark Fork River and Anaconda Regional Water and Waste are some years away. If it was necessary to undertake the kind of cost-benefit analysis and risk assessment called for in the bill for these response actions, given how long it would take to do this, the clean-up of these sites, if such clean-up occurred at all, would not occur until well into the 21st century.

This is all the sillier when one considers that EPA routinely prepares risk assessments and undertakes a form of cost-benefit analysis when it makes a decision. The bill, however, would require preparation of its highly particularized form of these two analyses, while imposing an entirely new layer of what can only be termed ''bureaucratic requirements'' for the performance of these tasks. The end result would be to make the performance of risk assessments and cost-benefit analyses much more onerous than what EPA presently does.

Another problem with the bill concerns it provisions for petitions to revise risk assessments. Thus, non-Subchapter III risk assessments that accompany response actions can be, and will be, challenged. Allowance for judicial review will then cause the particular response action to remain in a holding pattern while the sufficiency of the risk assessment is litigated. The end result will be more lawyers and delay.

Regardless of whether a strict cost-benefit analysis or risk assessment has to be prepared, all response actions (except those falling within the narrow significant commencement of construction exclusion) must meet the decisional criteria of §624. Thus, ongoing response actions, response actions for which there is already a ROD, and proposed ROD's will have to retrace their steps and reopen their proceedings in order to make the findings required by this section. And all this after an extensive administrative process, with input from the potentially responsible parties and the public. The lack of finality, which this bill condones and even promotes, results in inefficiencies and, of course, prevents a timely clean-up. I do not believe that such a process constitutes an improvement over the present statutory and regulatory scheme.

Then there is the question of the nature of the criteria. The bill states that the criteria do not supersede but only supplement any other decisional criteria provided by law. This may be a distinction without a difference. The decisional criteria mandate specific findings. Thus, they supplement and supersede the cleanup standards of §121 of CERCLA. In any event, and notwithstanding the provisions of §121, it is clear that the response action must meet the decisional criteria of §624.

The decisional criteria are not without problems, however. For example, when do benefits justify costs? Put another way, is justification synonymous with benefits > costs? Leaving aside definitional problems, which will lead to much litigation, discourage settlements and cooperation between the PRP and EPA, and put cleanups on a slow track, such a requirement is unnecessary. When EPA undertakes a response action it has made a determination that based on the statutory standards, which include that EPA consider costs, the societal benefits from that action justify undertaking it. This is nothing more than a cost-benefit analysis.

Another of the decisional criteria requires that the least cost alternative that achieves the objectives of the statute be selected. This criteria is also highly problematic. For example, two alternative response actions exist at a particular site. One is less expensive than the other but does not protect public health and the environment to the degree that the more expensive alternative does. Accordingly, both alternatives accomplish, but to varying degrees, the objectives of CERCLA. Under this criteria, however, the lower cost alternative would have to be selected, even if the other alternative was slightly more expensive but significantly more protective of public health and the environment. This is nonsensical.

The consequences on the Upper Clark Fork Basin NPL sites from the bill would be drastic. To the extent EPA is required to perform the risk assessments and cost-benefit analyses as set forth in the bill, cleanup actions would be delayed for years. Any risk assessment by EPA could also be challenged in petition proceeding. Timely cleanup will also be frustrated by the decisional criteria. PRPs, will utilize the vagueness and uncertainty associated with the criteria as leverage.

Thus, PRPs will be unwilling to enter into consent decrees and more willing to take their chances in court armed with the criteria. This will cause fewer settlements of actions. It will also, of course, create pressure on EPA to settle for less. Similarly, even if EPA is unwilling to settle on the terms of the PRPs, EPA will have to take into account the risk that its action may not be upheld if challenged. Accordingly, EPA will seek less in its remedy than it would otherwise. As a consequence, the cleanup of the Upper Clark Fork Basin NPL sites both in terms of its timeliness and its completeness will be jeopardized. Given the impacts to public health and the environment in this area, and the degree to which it will likely not be possible to fully remediate these impacts, any lessening of cleanup will be significant indeed.

* * * * *

The bill also presents a significant threat to the State of Montana's natural resource damage litigation and concomitantly the obligation of the State acting as trustee on behalf of its citizens to redress injuries to natural resources and make the public whole.

Major environmental management activities are also defined to include ''damage assessments.'' There is only one form of damage assessment under CERCLA and that is a natural resource damage assessment. Accordingly, it is clear that the bill is attempting to bring within its scope actions related to natural resource damage recovery. It is not entirely clear that the bill is successful in this regard because the bill imposes its requirements on ''agencies.'' Under CERCLA, however, natural resource damages are recovered on behalf of trustees. Notwithstanding the use of the term ''agency,'' it is likely that the bill would be read to impose its requirements on trustees given its clear intent to reach recoveries of natural resource damages.

Thus, the State of Montana, in the pursuit of its natural resource damage case, would be bound by the same requirements as EPA for response actions. Restoration actions have not commenced so the State's natural resource damage assessment and restoration plan would be subject to the bill.

There are two principal problems. First, the bill would necessitate that the State's assessment and restoration plan be revised to meet the new requirements. This would present a real problem for the State since the litigation is proceeding forward. To revise the State's assessment would bring the litigation to a screeching halt, undo much work that has already been done, and would extend the litigation and administrative process on which the litigation depends for years. It would also cost the State hundreds of thousands of dollars to comply with the bill's requirements.

More fundamentally, however, the bill seems to eliminate the possibility of the State recovering restoration costs. In the State's restoration plan various alternatives were identified that would ''restore'' the resource. The plan acknowledged that given the severity of the injury, actions could not be performed that resulted in immediate or near-term restoration, but felt that this fact should not act to disable the State from taking actions that mitigated injury and so hastened—somewhat—the eventual full recovery of the resource. The plan further acknowledged that in the end resources would be restored as a result of natural recovery. As noted, various alternatives were proposed that to varying degrees mitigated injury. One alternative that was always considered was the alternative of natural recovery. This alternative will result in the restoration of resources in the Upper Clark Fork Basin; however, restoration will not occur for thousands or tens of thousands of years. Since the purpose of the natural resource damage provions of CERCLA is restoration and since natural recovery will accomplish restoration and will almost always be the least cost alternative considered, the bill's decisional criteria would mandate the selection of this alternative notwithstanding any other considerations.

Please object to the provisions of the Regulatory Reform Act that would be harmful to the interests of the State of Montana.

Sincerely,

MARC RACICOT,
Governor.

BUTTE-SILVER BOW,
COURTHOUSE,
Butte, MT, June 28, 1995.

Senator MAX BAUCUS,
U.S. Senate,
Washington, DC.

DEAR SENATOR MAX BAUCUS: I am writing today to express my concerns about certain provisions of the Regulatory Reform Bill. While I surely understand the need for reform, and I applaud the Senate for taking a leadership role in the development of sound reform policy, I have serious reservations that the provisions related to new cost-benefit analyses for Superfund sites will damage and delay ongoing clean-up efforts in Butte and sites along the Clark Fork River.

I can understand how a thorough cost-benefit analysis would be useful for a new site or sites that are early in the process of investigation. However, in Butte, we are well down the road in the decision-making process for several ''operable units'' within the four NPL sites. There are Records of Decision and various Decrees for several sites, such as the Berkeley Pit/Mine Flooding area, the Montana Pole Treatment Plant, the Lead Poisoning Prevention Program, the Priority Soils Area, Lower Area One/Colorado Tailings, and most recently, the Streamside Tailings along Silver Bow Creek. The prospects of stopping this progress to conduct additional cost-benefit analyses (as per the draft provisions of the legislation, Sections 624 and 628) would be damaging.

I can assure you that, in Butte, cost has been a significant factor in the decision-making process. In our efforts to work with the regulatory agencies and the PRP's in our area, we have developed a very practical view of the balance between clean up and resources expended. We have worked hard to incorporate and substantially address cost considerations in the remedy selection process.

Senator, I would ask that you ensure that any new legislation designed to provide regulatory reform does not, in the process, slow down the work already in progress where significant decisions have been made. If you would like additional information, please do not hesitate to contact me.

Sincerely,

JACK LYNCH,
Chief Executive.

Mr. BAUCUS. Section 628, the section I think should be deleted, clearly causes big problems for the State of Montana. But not just the State of Montana. In fact, my best estimate is the provision affects at least 650 Superfund sites across the country. That is virtually every State. Let me give the numbers.

Today, studies are underway at 263 Superfund sites. Remedies costing more than $10 million have been selected at 285 sites. And cleanup is underway at 430 sites. We do not know how many of these 430 exceed the $10 million threshold, but the average cleanup cost is $30 million. So, obviously, most exceed the threshold. So a conservative estimate is that half of the 430 sites exceed the threshold.

This chart at my left illustrates what would happen to these sites under this bill. Consider the 285 sites where a remedy has already been selected. At each site there has been extensive study, public involvement, and negotiation. After years, people have finally agreed about how to clean up the site.

Let me refer to the chart more fully. Now, as I said, there are about 263 of the sites where study is underway, in red. The yellow shows there are 285 sites where the remedy has been selected. And the green shows there are 430 where there is ongoing cleanup. That is the current situation.

If S. 343 passes, including the section which we want deleted, what will the result be? The result would be twice as many studies. And it will mean—as the chart shows, only half as many sites will be cleaned up. That is a conservative estimate of the consequences of this bill. These sites will get thrown back for further study, which could take years.

Consider the 430 sites where there is an ongoing cleanup. Those sites also get thrown back into further study, unless we can prove the construction has commenced on a ''significant portion of the activity,'' whatever that means, and if other criteria are met.

So putting all this together, the impact of section 628 is very simple. The number of studies will double and the number of Superfund cleanups will be cut in half. This chart shows it. The red is the number of studies which will double. The green shows cleanups which will be cut in half.

I will say that once more. The number of studies will double and the number of cleanups are cut in half. A lot more redtape. A lot less cleanup. I do not I think that is what we want to do.

All across America people will wake up and discover that the purported regulatory reform bill has a very surprising effect. They will discover that virtually with no notice whatsoever, Congress has stopped Superfund cleanups dead in their tracks, and the residents of frustrated and exhausted communities will discover to their amazement that Congress has decided that Superfund sites need more study, more analysis, and more talk before a single shovelful of dirt can be moved or a single thimbleful of groundwater could be pumped.

Before concluding, I would like to repeat a point I made earlier. I am not defending the status quo. Superfund needs to be reformed. And some of the needed reforms may well relate to risk assessment and cost-benefit analysis. The Environmental and Public Works Committee reform efforts are well underway. But the issues are complex, they are controversial, and we cannot reform Superfund overnight.

Ironically, the bill repeats the same mistakes that the original drafters of Superfund made in 1980; that is, it is a hasty overreaction. It is a quick fix. It will cause a lot more problems than it would solve. But it is likely to have a very harsh consequence as well for the people who want their neighborhoods cleaned up and have already suffered enough.

H.L. Mencken must be smiling as he looks down on us from heaven today. We are addressing a complex, difficult issue and we are considering a simple, straightforward, easy solution that is dead wrong.

It is for these reasons I urge my colleagues to support my amendment and strike this provision from the bill.

Several Senators addressed the Chair.

Mr. GLENN. Mr. President, parliamentary inquiry: Earlier on we were waiting for a reply to a proposal by Senator JOHNSTON on the Superfund withdrawal bill. The majority leader indicated that he would check on his side and get back to us. I believe it was agreed—correct me if I am not correct—that the Senator from California, Senator BOXER, was to be recognized to speak on her amendment with the idea that, if the majority leader came back, we would then complete action on the Johnston proposal after which time she would be permitted to continue.

Is that correct?

The PRESIDING OFFICER. The agreement provided that once the Johnston amendment is disposed of, the Senator from California may offer her amendment.

Mr. GLENN. Yes. We were getting in a little time situation here where the Senator from New Jersey was going to speak I believe on a similar subject. I wanted to make sure everybody was aware of what the parliamentary situation was in case the majority leader comes back to the floor and we finish the work on the Johnston amendment.

Mr. LAUTENBERG. I want to be sure. I intend to speak on the Superfund amendment, though I support the amendment by the Senator from California. And I assume that, once having that recognition from the floor, I will be able to continue my remarks.

Mr. HATCH. Will the Senator yield for a parliamentary inquiry?

Mr. LAUTENBERG. Yes.

Mr. HATCH. I thank my colleague.

Mr. President, as I understand it—correct me, if I am wrong—as soon as the Superfund amendment is disposed of one way or the other then anybody can call up an amendment. Or is it by unanimous consent that the Senator from California would have the right to call up her amendment?

The PRESIDING OFFICER. The agreement provided that the Senator from California would have the right to call up her amendment.

The Chair previously recognized the Senator from New Jersey.

The Senator from New Jersey.

Mr. LAUTENBERG. The Senator from New Jersey would be happy with a unanimous-consent agreement to yield to the Senator from Montana to permit him to make his inquiry and to conduct such business as he would like.

Mr. BAUCUS. Mr. President, I ask for the yeas and nays on the pending amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BAUCUS. I thank the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I thank my colleagues for clearing the agenda.

Mr. President, I want to take this opportunity to talk about the section 628 of the pending regulatory reform bill. I am delighted to cosponsor this amendment. It deals with environmental cleanup.

As the former chairman and current ranking member of the Environment and Public Works Committee with the jurisdiction over Superfund, I believe that adoption of this amendment is critical to achieving real reform in the program. Let me begin by explaining it.

The language sought to strike has nothing to do with reforming the regulatory process. It has everything to do with undermining and invalidating specific regulations. It does not allow the reform regulatory process to work. Rather, it is an effort to mandate an outcome of that process.

The Superfund provision in the Dole-Johnston substitute makes an exception to the general rules established in the bill so that efforts to regulate Superfund sites—and only Superfund sites—are to be treated differently

than all other regulatory actions. As we know, the bill currently says that only if a regulatory decision costs more than $100 million it is considered a major rule, thus triggering lengthy reviews and certain protections in the bill. Only a small percentage of Superfund sites involve costs of more than $100 million. As a result, most Superfund sites would be exempt from the procedures I just mentioned that are established by the bill.

That was apparently unacceptable to those who want to avoid costs and delay in cleanups. As a result, they created the lower threshold of $10 million which would apply only to Superfund sites. And if that triggers some suspicion in the minds of those who are trying to figure it out, that suspicion is warranted. Every other regulatory decision has to cost more than $100 million before it is considered a major rule. But at Superfund sites—and only there—the threshold will be considered to be a major rule when it starts at $10 million.

There is no logical explanation of why; no justification for the exception, just a little provision that treats Superfund differently than any other program in the Federal Government.

Mr. President, to me it is obvious that there is intentionally or otherwise a mission here that would emasculate the Superfund program. That may satisfy some who will do what they can to delay the cleanups required, or at least for it to kill the program. It may help those who want to escape their obligation to pay for the cleanup of sites but it will not satisfy those who want to get after the environmental blight, and it should not satisfy anyone who wants to protect the health and safety of the millions of Americans who live, work, or play near Superfund sites.

By the way, for many, that is not an option. That is where home is. That is where work is. That is where a school might be. They did not choose to build or to live near these sites. But, unfortunately, once these environmental problems were discovered it was a new learning experience for people. Suddenly, they learned that perhaps the water supply may be contaminated or the ground that their kids are playing on may be dangerous for them.

One of the many unintended impacts of this bill is the dead certain proposition that it will make the problems that plague the Superfund program worse.

This bill would have the effect of stopping Superfund cleanups in their tracks apparently under the theory that we need to spend more time doing more studies before deciding what we can do to clean up the mess that we have already been studying for years and years.

Let us be candid. The Superfund program already contains an extensive risk analysis and cost-benefit evaluation. The private parties who are responsible for the cleanup are already involved in the remediation process. And so is the affected community. The criticism of the Superfund program is that it studies too much and does too little. Look at what we do already.

Superfund site remediation decisions are not made casually or without consideration of risks or cost benefit. Under the present law, EPA must conduct numerous studies and consider costs and other factors in selecting a cleanup remedy. During the remedy selection phase, a detailed risk assessment is conducted by looking at the people and the environment exposed to the risks associated with the Superfund with this toxic site. For the pathways of exposure, such as ground water, surface water, air, soil, however, the contamination travels in the specific contaminants present at the site.

Following these studies, EPA announces a proposed cleanup approach, receives public comment on that approach, and issues a record decision to memorialize its final cleanup decision.

Often the private parties performing the studies in cleanups have been very involved in developing the appropriate remedy. We do all of that now. Yet, S. 343 says that we ought to do more studies which would, of course, mean less cleanup. It allows a party to reopen the whole process once a decision about how a cleanup process ought to proceed. In fact, it will allow a party to reopen the whole program even after construction and implementation of the cleanup program has begun.

This legislation virtually requires an expensive, slow, and often duplicative study process even if the private parties involved are not wanted and did not believe it was necessary. This bill would virtually require reconsideration and reevaluation of the cleanup strategies that are being developed and instituted at hundreds of sites. This would be a tragic development and a tremendous waste of resources. It would cause great consternation at the sites where communities have negotiated and agreed to a level of cleanup that could be overruled by this law.

How do we explain to the residents living near Superfund sites that we are going to throw out years of study, years of work, and construction in many cases and stop and restudy the whole cleanup from start to finish?

During the last Congress, EPA, industry and the environmental community produced a set of consensus proposals to reform Superfund, to reduce litigation, to speed cleanups, to cut repetitive analysis and to improve public participation in the cleanup process.

Mr. President, I was again then chairman of the subcommittee, and everybody worked hard—Democrats, Republicans, the administration, outside groups, be they industry, academic, Government, environmentalist. Everybody pitched in to try to reform Superfund because there have been problems with it. No one can deny that. But its mission is a purposeful one.

As a result of some obstruction, we did not pass that reform Superfund proposal. Frankly, I thought it was an environmental tragedy after so much work and so much agreement had been hammered out with parties that typically disagree, and here we are today now first reviewing the Superfund program. Once again, it is nearing its expiration date. Lots and lots of money has been spent, billions by the way, and much of it in the learning process because, unfortunately, it was not the job that we expected to have to do when we set out to do it. It took a lot more because the toxic contamination was a lot worse, and as a consequence we are now in a situation where the moneys spent up front are beginning to pay off. But we did not get the chance, we did not have the outcome that we wanted to have to speed cleanups and to reduce litigation costs.

Additional changes to speed cleanup are now being considered in the Environment and Public Works Committee, and they are likely to be approved. This bill threatens to go in the opposite direction by increasing litigation, adding more needless analyses and slowing cleanups while saddling EPA with new paperwork burdens.

Now, I am working with the chairman of the Superfund subcommittee, Senator SMITH of New Hampshire, on Superfund reform and reauthorization. We do not necessarily agree about how the program ought to be changed, but the fact is that we are talking, and we are bringing in witnesses, and we have had testimony and hearings. I think it has improved the atmosphere as well as the possibility that Superfund reform is going to be accomplished in fairly short order. I believe that we agree that reform is supposed to increase speed and reduce redundant studies.

This bill is inconsistent, Mr. President, with that vision of reform. It is also inconsistent with a serious effort to get Superfund reformed and reauthorized rather than have this buried as a subsection of this long and complex bill dealing with regulatory reform. This is not the way to do business.

Mr. President, Superfund is not necessarily popular with everybody, but cleaning up our hazardous waste is a mission that all of us I believe can agree upon. It is a very expensive proposition. It has been looked at over the last 50 years, and finally in 1980, a law was established to move the process along.

Now, private parties do not like cleaning up the mess if they caused it or if they are found jointly or severally responsible. Insurance companies do not like it because they have to pay the claims. But the strongest criticism of our hazardous waste cleanup programs is our unending studies to determine the proper remedy.

In fact, Congress recently spoke to this issue. During the last rescissions bill, $300 million was rescinded from the Department of Defense cleanup program because it was felt that too

much money was being spent on studies and not enough on cleanups. This provision would require yet more money be spent on just such studies which would both delay cleanups and leave less money for that task.

I do not want to go back to Superfund sites in my State and explain to my constituents who live near Superfund sites that agreed upon remedies are going to be reopened for a further round of studies.

I do not want to have to explain that a new study phase will delay cleanup for years and years. They do not like that news. I do not want to have to tell them that cleanups already begun will suddenly be halted when they have already lived with threats to them and their family's health for already too long a period of time.

Why is this delay inevitable? Well, in addition to the opportunities it gives to private interests to create delay, look at what it does to the Government's ability to move forward quickly. The EPA now processes about 10 major rules a year. Under this bill, it is estimated that EPA will have to do a complete risk assessment and cost-benefit analysis for about 45 major rules each year for the various programs it administers.

I wish to make clear what happens with a major rule. It involves lots and lots of people. It involves lots of computer use. It involves lots of calculation. It involves lots of time and lots of money. This is not to say that we should not be doing studies. We should. But we have already done them, done them sufficiently I think to answer all of the concerns that people have. But if our amendment fails here and EPA must do a cost-benefit and risk assessment for Superfund sites over $10 million, it will have to do approximately 650 additional risk assessments and cost-benefit analyses.

Mr. President, my argument can be summarized in these three points. First, the bill before us treats Superfund in an unjustified, special, and unique way. It contains a special carveout for the particular interests that want to reduce or evade their responsibility to pay for cleanups.

Second, the bill before us will inevitably delay cleanups, prolonging the risks those toxic hot spots pose to human beings and to the environment. That delay is a function of the overt mechanisms in the bill which require new studies and the practical inability of EPA to conduct the number of studies which will be required.

We want EPA to be an organization that conducts cleanups. We do not want it to devote all of its time to doing studies.

So the bill will cause delay in cleanup, the one thing that we all want to hasten.

And third, there is no finding that these new studies are required. Superfund already has sophisticated cost-benefit and risk analysis. If you think there ought to be changes in the way that analysis is conducted, then require those changes when we reauthorize Superfund in an orderly process. Do not try to force them into a bill that has a much more general goal of reforming the process by which we regulate.

Mr. President, we ought to let the authorizing committee handle Superfund. We are working toward that goal. And when we bring legislation to the floor we can understand it, we can debate it, and justify the decisions that we make. Doing reform in the backdoor manner proposed by this bill is totally unacceptable.

I want to point out what is here on the chart to emphasize, that is, that presently we have already 430 sites where cleanup is underway. We have decisions being made at 211 sites. We have remedy selections at 74 sites and studies already underway at 263 sites. If S. 343 passes as it is, then what we will do is we will have to study 763 sites. It means practically the end of serious decisions about cleanup and beginning the process.

What we will be left with is 215 sites with cleanup underway, as opposed to 430, and decisions underway for 211 other sites. We will move into the study phase. This will turn out to be a calculous laboratory where everybody will be participating in studies and not getting work done and will exaggerate criticism that now exists that all we do is study things to death. We have studied things, I hope not to death, but we have studied them for a long time. The decisions are made on the science available, and there is an orderly process. We ought not tinker with it, but reform it in an orderly way.

So, Mr. President, I urge my colleagues to support the motion that is now before us to strike the special relief language for special interests that are now in this bill. I yield the floor.

Mr. KYL addressed the Chair.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Arizona.

Mr. KYL. Thank you, Mr. President.

I would like to make a few remarks regarding Superfund and the reasons why it is included in this legislation. There are a couple of anomalous things about the Superfund law. One of them is that there is no judicial review. And I think it is no coincidence that one of the laws that is working least well, a point that all of us would agree on, is also a law that provides for no judicial review. The second thing is that the Superfund law actually does provide today for some cost-benefited analysis and risk assessment. So it is not a new concept when applied to this law.

But the bill before us, the Dole-Johnston amendment, would really provide a more precise and meaningful procedure for applying that cost-benefit analysis to Superfund so that the net result should be not more costly studies and delay, but a more precise application of a principle which is already required and which should make much more efficient the process for deciding the priority of sites to be cleaned up, and probably also make it easier if the judicial review provisions are put into place to really test those that need to be tested and allow the others to proceed to clean up.

So we believe that S. 343 establishes strong, good requirements to do the right kind of risk assessment and cost-benefit analysis for Superfund cleanups. And, of course, the point also here is that it is in those cases that exceed $10 million. Now, we have heard arguments here by some that would like to see this section removed from the bill. I will make the point first of all that there is much more than Superfund in the amendment which would be removed from this bill. We will leave that for others to discuss.

But just to focus on the question of whether the Superfund provision should be removed, in many respects Superfund is an example of the best of the worst. Unlike many other programs with tangible results, Superfund has almost nothing to show for its billions of dollars in expenditures of public and private funds, I might add.

And again, this is a point upon which a lot of us would agree: Superfund has just not met the expectations that we had for it at the time that it was adopted. So clearly, more effective risk and cost-benefit analysis are desperately needed for the program. These are the tools that the Government can use in carrying out the requirements of the law.

So instead of trying to remove these provisions from the bill, we ought to be strengthening those procedures so we can really do the prioritization necessary to get to the job of cleaning up the sites that need to be cleaned up and leaving the others alone.

As I said before, also ironically, Superfund already requires cost-benefit analysis. It requires the President to select appropriate remedial actions that ''provide for cost effective response'' and to consider both the short-term and long-term costs of the actions.

It requires the President to establish a regulation called the national contingency plan to carry out the requirements of the statute. This plan has several requirements that would contain methods for analysis of relative costs or remedial actions; means for assuring that remedial actions are cost-effective over time; criteria based on relative risk or danger for determining priorities among releases of hazardous substances for purposes of taking remedial action. The national contingency plan also requires a baseline risk assessment to be performed for every remedial action. This means that for every Superfund cleanup, a risk assessment is supposed to be done right now.

It requires the President to identify priority sites that require remedial action through a hazard ranking system that must—again, I am quoting—''assess the relative degree of risk.''

So to suggest that somehow both cost-benefit and risk assessment are inconsistent with the Superfund is to ignore existing law. It is in the existing law. So by taking it out of that provision, we are not removing that concept. But what we are doing is preventing ourselves from providing a more effective means of applying the cost-benefit and risk assessment to Superfund.

Now what happens at the typical Superfund site? I exaggerate almost none here, Mr. President. You have a release of some kind of hazardous substance discovered. The presence of this substance in the environment may or may not be harmful. Before that is even determined, practically every small business in the community that has ever had any contact with the site at all gets a letter.

The letter basically says, ''We think you are liable. Prove to us that you are not.'' So immediately, you have all of the small businesses and some big businesses, too, immediately put into the position of being in a group of defendants having to try to prove that they are not liable for something that frequently occurred a long time ago without knowledge on their part.

The costs to small business are very high. And it costs more than just money. The cost in time, in terror, literally, in toil and frustration in dealing with the alleged Superfund liability is one of the most gross aberrations in our legal system that we have on the books today, which is one of the reasons why there has been a lot of discussion about the reform of Superfund that hopefully we will get a little later.

But every mom and pop operation that sent trash to a landfill that became a Superfund site knows exactly what I mean. The strict joint and several retroactive liability in this law is dragging down small business for the third time.

And the recourse? Essentially none. Because unlike other laws and unlike S. 343 before us, Superfund expressly prohibits judicial review. Now, is that really what the opponents of this law applied to Superfund want? I do not think it is coincidence, as I said before, that the most oppressive and maligned and dysfunctional environmental program we have is also the one that prohibits redress in the courts. This is something on which we are all in agreement.

So why can we not agree to provide judicial review to Superfund? Why is there opposition to having regulatory reform for Superfund in this bill? Even the administration has said it needs to go forward.

In a memorandum prepared by the Council on Environmental Quality, the administration correctly pointed out the blatant inconsistencies regarding its posture regarding S. 343 and its position on regulatory reform and cleanup statutes.

Here is what this memo states: That opposition to the intent of the cleanup provision in S. 343 is ''inconsistent with several administration policies.''

Quoting again. ''The administration has repeatedly testified that cost-benefit analysis is a 'useful tool' in making cleanup decisions.'' Again quoting. ''EPA, DOD, and DOE have made well-publicized commitments to more realistic risk analysis in cleanup activity,'' exactly what we are talking about in this bill.

Executive Order 12866 requires cost-benefit analysis for regulations over $100 million. Many cleanups exceed this amount and the total cost of cleanup activities approaches or exceeds $400 billion. Quoting from this memorandum:

> It will be hard, politically and logically, to defend application of the cost-benefit comparison to the former decisions and not the latter.

This is the administration speaking.

Now, critics of this section argue that these reforms should be addressed in the Superfund reauthorization, and that is an appropriate place to deal with some of the reforms we are talking about.

That is not to suggest, however, that in a bill dealing with cost-benefit analysis and risk assessment and judicial review those matters should not be dealt with in this legislation.

I know that Senator SMITH, and others who have spoken here, members of the Environment and Public Works Committee, have been working very hard, but Superfund reauthorization may not be completed this year. I know the committee that I sit on, Energy and Natural Resources, understands the toll this program is taking on industrial facilities, small businesses and understands the need to get on with the process of reform of the process as opposed to the substance, which will, of course, be covered in the reauthorization.

We are cutting our training and operation budgets in the military services and yet we keep getting higher price tags for installation cleanups. I cannot even begin to tell you what the runaway cleanup costs translate to in the Department of Energy.

So, Mr. President, in conclusion, I believe that the Superfund cleanup provisions in this legislation are entirely consistent with existing law. They are consistent with planned administrative reforms that the Clinton administration is putting in place even now, as indicated by the memorandum I cited, and, perhaps most important, I think many of us would agree that Superfund is not a level playing field, that small business is being savaged by what amounts to institutionalized extortion from regulations.

Federal and State regulators have ignored the risk and cost considerations throughout the process, in spite of the statutory requirement to consider those factors, and that is why this legislation is needed. The program is so badly broken and so desperately in need of major change, largely because the degree and the costs of cleanup have proceeded virtually unchecked for years. Simply having these provisions in this bill has brought about a new willingness on the part of regulators to be more realistic in the remedial action selection process.

The Superfund provisions of S. 343 are consistent with the law, are a needed reform of the remedy selection process, and are an appropriate and necessary reform of one of the most expensive, intimidating and crushing regulatory programs for small business in the history of this country.

Mr. BAUCUS. I wonder if the Senator will yield to me?

Mr. KYL. I will be happy to yield. Of course.

Mr. BAUCUS. I appreciate the Senator yielding. I heard the Senator say that in the Senator's opinion that the provisions of S. 343, particularly section 628, are consistent with or conform with basically the Superfund cost-benefit or risk assessment provisions now, and because they are consistent and basically conform, there should be no opposition. My question is, if they are consistent, conform, then what is the purpose of this provision? That is, the Superfund already does contain, as the Senator already said, cost-benefit and risk assessment provisions in determining sites and remedy selection and plans for cleanup. I am just curious, what is the need for this provision?

Mr. KYL. Precisely the correct question to ask, and I appreciate it, because it applies not only to this issue but several others in other aspects of this legislation. We have Executive orders since the administration of President Ford, for example, which require cost-benefit analysis, but almost all of us, I think, are in agreement that they have not worked. The procedures are not in place to force compliance and to provide for appropriate judicial review.

So what I am saying is that while there is a requirement for cost-benefit analysis and risk assessment in the existing law, it is not working, and the provisions of this bill will allow it to work in a way which gets to the other point that the Senator from Montana was raising, and that is that we have spent a lot of money and do not have a lot to show for it.

Mr. BAUCUS. I understand. If I might ask——

Mr. KYL. We should not delay any longer. I think this legislation will make the existing regulations workable for the first time.

Mr. BAUCUS. Another question. I am just curious of the Senator's view, what is the precise language in section 628 that will speed up cleanups, that will address the problems small businesses face, that will reduce regulatory red tape, that addresses the joint and several and strict liability problem that bedevils so many parties involving cleanup sites? I wonder what is the precise language in this amendment which addresses the real problems—I agree they exist—that so many people face when dealing with Superfund. Can the

Senator point out some language in the amendment that he thinks will specifically help answer some of those problems?

Mr. KYL. Sure. The entire section that establishes the procedure and the judicial review, which is missing from the Superfund legislation, will make it possible for individuals to insist that proper risk assessment and cost-benefit analysis is applied, and if it is not, a remedy will exist to require it to be applied, something which does not exist today.

Mr. BAUCUS. I am just perplexed, in all candor, because the provisions of section 628 with respect to risk assessment are actually quite different from current Superfund law.

Let me point out some differences. One, under this bill cleanups would generally be required only if the benefits justify the costs. That is a different standard than current law. And second, under this bill only the least-cost cleanup option would be selected. That is now not the case under Superfund.

So they are not the same. Thus, S. 343, including section 628, would, by definition, require EPA, for example, and the States to stop what they are now doing and go back all over again from scratch and start the risk assessment and cost-benefit analysis, which would add more cost, more delay, and more red tape. And because Federal facility sites will cost more than $10 million to clean up, the clean up of each of these sites would be further delayed under the provisions of this bill.

Why does the Senator believe that those provisions would not necessarily stop the present cleanup program and cause more red tape, more delay?

Mr. KYL. First of all, the Senator is absolutely correct. The provisions of this bill are somewhat different from existing law with respect to the specific tests for cost-benefit analysis and risk assessment. That is the whole point.

My point in pointing out that cost-benefit analysis and risk assessment are already part of Superfund was to illustrate two things: First, that the concept is not alien or inimical to Superfund. This is something that we have already said should be a part of our analysis for Superfund cleanups.

Mr. BAUCUS. If I could just——

Mr. KYL. If I could just go on.

Mr. BAUCUS. Sure.

Mr. KYL. And second, to note that while that is true, while it was our intention, while we wrote the exact words in the statute, it has not worked. And I think we agree on that.

So, yes, the answer to the first question is there are different provisions—that is the whole point—to make it work because it has not worked in the past. The administration itself, CEQ, pointed out the fact that it would be pretty inconsistent to argue you should have cost-benefit analysis before, but now it is not appropriate.

But the second question I think the Senator asks is the more difficult question and the one that is really important—and I respect the Senator for raising the issue—namely, we want to get on with the cleanup of these sites. Will this cause a delay or not?

That is a very legitimate question. But I think, again, there are two answers. One, reasonable people can differ whether it will cause delay. We do not want it to cause delay, but we want it to do the right thing, and that is the other point here. We have to do the right thing. A lot of us believe we are spending millions and billions of dollars, really, in activities which are totally nonproductive where the risks are exceedingly low, where we ought not be wasting our money, and there are other sites that just beg to be cleaned up. Perhaps one of them is the example the Senator from Montana cited where we have to get on with it and prioritize those sites and get the job done where the cost clearly is outweighed by the benefits to be achieved. So that is the kind of analysis in which to engage.

Instead, what we have is taxpayers paying lawyers and consultants billions of dollars to essentially waste time, dollars that are not only Government dollars but also small business dollars and other business dollars, and that is what we are trying to resolve with this legislation.

Mr. BAUCUS addressed the Chair.

Mr. KYL. I am happy to yield my time. I have concluded my remarks. If the Senators would like to take it at this point.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, I appreciate the comments of the Senator from Arizona. With all due respect, they are really not on target. That is for this reason. We all agree that Superfund has terrific problems. But the problems that it has are not solved by this amendment. This amendment does not even address—does not even begin to address—the problems of the Superfund. In some sense, they are irrelevant to the problems facing Superfund. I will explain that.

One of the main problems of Superfund today is joint and several and strict liability. This amendment has nothing to do with that, despite what the Senator from Arizona would like us to believe. Under joint and several and strict liability standards today, all parties are subject to the same joint and several and strict liability standard. And what happens? Some company—maybe the primary perpetrator that caused most of the toxic waste and hazardous waste at a site and other companies may be partners, or another company may have bought the site later, or a company may have owned the site earlier. A bank might be involved. A bank might have made a certain loan to one of the parties. Under the current law, they are all lumped in together. They are all jointly and severally liable and subject to strict liability. That is the current law.

Here is what happens. Everybody sues everybody else claiming that he is the principal problem—not me but him. Well, everybody that is subject to liability, of course, is jointly and severally liable. That is why there are a lot of lawsuits today. It is the standard which creates the lawsuits. All of the people that are involved are suing each other.

This amendment has nothing to do with that—nothing to do with that. So to stand up here on the floor of the Senate and say this amendment, section 628, is going to solve the problems of the red tape and delay, is a nonstatement, it is not accurate. It is not accurate because the problems facing people that cause all of the problems of the Superfund are caused by the underlying statute, substantive law not addressed by this amendment.

Here is another example. Let us take a small businessman, somebody who has fewer than 50 barrels of hazardous waste at a site, who is a de minimis contributor. Under the provisions of the Superfund reform which we tried to enact last year, small businesses would be either exempt if they are particularly small; or if they are somewhat small, they would be entitled to a very expeditious standard and their liability limited to their ability to pay. That is a problem that the Environment and Public Works Committee tried to solve last year. But section 628 of this bill has nothing whatsoever to do with these real problems—nothing.

All section 628 says is cost-benefit analysis and risk assessment must be prepared. It has nothing to do with the problems of small business, Mr. President—nothing. Last year, we tried to enact Superfund reform—and as the Senator from New Jersey a few minutes ago very ably stated, it was stopped. We came up with a provision that eliminated joint and several liability to those who settled their liability through a new voluntary allocation system and not through court. Under this new allocation system companies would have an allocator decide which company is proportionately responsible for which portion of the waste. And if the company agrees and settles, they could not be sued; they would be immune from a lawsuit. Good idea. Everybody thought it was a good idea. Big business loved it. Small business was ecstatic. Environmentalists thought it was great. All the groups came together and agreed that this is a good, major reform to the Superfund.

There are lots of other reforms in Superfund that we tried to pass last year. Some just did not want it passed. It was a disservice to the country. So here we are all over again trying to reform Superfund. This amendment has nothing to do with any of that. Nothing. N-o-t-h-i-n-g. The way to solve Superfund, Mr. President, frankly, is not to pass this amendment.

What does this amendment do? It says you take the current lousy, botched up, unworkable Superfund program and add to all of the problems—more problems. It says start over again

and add a new kind of risk assessment and cost-benefit analysis. That is what this amendment does. It says, take the current lousy law and delay it further, add more redtape, start all over again. It means fewer cleanups. There are lots of sites in this country, Mr. President, where cleanups are finally agreed to and are in progress. It has taken 10, 12, 15 years in some cases. This amendment says go back and start over again. That is exactly what it does, despite what anybody else says.

So the answer, I think—and I have given a lot of thoughtful consideration to this, not rhetoric or a lot of stuff, not playing to the cameras—a thoughtful solution to this, frankly, is to delete this provision from the bill. It is not going to solve the Superfund problems. Somebody might like to say that it does for the people back home. In fact, it makes it worse.

Rather, let us solve this the only way these problems can be solved; that is, to lower the rhetoric, quit the demagoguery, sit down and work with all of the people involved. You roll up your sleeves and cross the t's and dot the i's and find a solution, which is what happened over a year ago. Many outside groups who know the subject came together, worked hard, and reached an agreement. Most of the insurance industry also agreed. Some of the insurance industry did not agree, but most did.

Let me read some of the supporters of it: Aetna Life Insurance, Allied Signal, American Automobile Manufacturers—this list goes on and on, and I will not bore the Senate. I am glancing here, and these are big, well-recognized organizations and companies. There must be over 100 on this list.

One of the greatest disservices this Congress has performed, in my judgment, in the last several years is the failure to pass Superfund legislation a year ago because it was a solid reform that would have helped people, provided a public service, which is what we are all elected to do. This amendment in this bill, section 628, not only does not do that, it makes a bad problem worse.

I just ask every Senator and every staff person listening to forget the rhetoric, read the provisions of this bill, section 628, read Superfund, and just think. All you have to do is think. If you think, you are going to reach, I submit, roughly the same conclusion and therefore realize that, maybe we should not be including Superfund in this regulatory reform bill after all. And if we are going to do right by our people back home, let us take it out and reform Superfund in the right way, through the committee process, something along the lines that we enacted a year ago.

Mr. JOHNSTON. Mr. President, I yield to no one in this body on my enthusiasm for risk assessment. It was I who first proposed, wrote, and passed twice a risk assessment provision, which did not pass the House, of course, and so we are here today working on this legislation.

I believe the concept of risk assessment is one of the most important things we can ever do for this Government. It will save, I believe, hundreds of billions of dollars. It will relieve taxpayers and citizens of this country of huge and unnecessary burdens and will allow the means that we have, the dollars that we have in this country, to be spent on environmental and health and safety matters, to be applied to environment and safety and health matters and not to waste, as it is today.

Now, having said that, Mr. President, I rise in enthusiastic and very strong support of this amendment. The reason is that this amendment and the application of this procedure to Superfund, as well as to defense cleanups, as well as to cleanups under the Solid Waste Disposal Act, do not fit.

They do not fit, Mr. President. We have been talking about Superfund, and I concur with comments of my colleague from Montana, that that needs to go through that committee. That committee voted out and passed that bill last year. We need to do that again this year.

Mr. President, we have not spoken about cleanup at defense plants. Cleanup at defense plants is an activity on which we are presently spending over $6 billion a year. It is the largest cleanup activity of the Federal Government.

Now, Mr. President, we commissioned a report on the Hanford site, which is the most difficult site and the most expensive site of the DOE. They came back with a horror story about how money is being squandered and nothing is being done. I will not go into all the reasons, but the principal reasons are that the legal matrix, the legal framework that we in the Congress have created for Hanford as well as other DOE sites, does not work.

We not only have the Superfund, which is applicable to Hanford, we have RCRA, which pertains to chemical wastes. We have a tripartite agreement setting standards, dates, and requirements—dates that cannot be met, standards that have not been passed, and using technologies that do not exist.

Moreover, Mr. President, we have superimposed upon that an act we call the Federal Facilities Act, under which the Federal Government can be sued and the Assistant Secretary of Energy can be put in jail—something he is very concerned about—if they do not meet standards and dates that are impossible to meet because there is no place, for example, to store the waste, because the waste isolation pilot plant is not ready, and that is the only place available for some of these mixed wastes.

Mr. President, it is probably only the Congress of the United States which could have designed a legal framework as confusing, as contradictory, as difficult, as unworkable, as unbelievable as we have created for our defense plants' cleanups.

Now, Mr. President, the Senator from Alaska [Mr. MURKOWSKI] and I have proposed legislation for Hanford. We have proposed to deal not only with CERCLA but RCRA, the Federal Facilities Act, the tripartite agreement. We proposed to reconstruct that and do it over again.

It is not that we do not want to use risk assessment. Risk assessment is central to the issue. It is a risk assessment procedure that would be vastly different from that which we have constructed in this bill.

This bill constructs risk assessment principally for Federal rulemaking, EPA-type rules. It is workable, a good procedure, which, Mr. President, I am very proud of the handiwork in the Dole-Johnston bill. I think it is workable. I think it will improve environment. I think it will improve health. It will save lots of money. It is a very, very good bill.

But it does not fit for defense plants' cleanups. We have to deal with those tripartite agreements. They have, Mr. President, as I am sure all my colleagues know, a problem at these defense plants, what we call mixed waste—mixed chemical waste and mixed nuclear waste or radioactive waste. One set of regulations for radioactive waste, one set of regulations for chemical waste, and no technology yet to deal with the mixed wastes. Some promising research is being done, and no place to put the waste.

Literally, our Assistant Secretary of Energy, unless we change the law, can go to jail for not doing what is impossible to accomplish. Absolutely that is true, Mr. President. The waste isolation pilot plant is not ready.

By the way, the reason it is not ready is also because we do not have a well-working risk assessment bill. If we did, they would have done the risk assessment and would not be doing some of the silly things they are doing down in Carlsbad, NM, on delay and unnecessary expense in the plan.

Be that as it may, WIPP is not ready and we have no place to put the waste and we do not have the technology. It is a grand and glorious mess.

What we propose if we can pass our legislation, Mr. President, is create this paradigm, this legal matrix, limit it to Hanford, and then we propose to use that as the model for other defense plants. We will have to modify it—things are a little bit different, at Rocky Flats in Colorado, et cetera. Each one of these sites has their own peculiarities. Some have a lot of plutonium, some have a lot of mixed waste. Hanford has almost every imaginable kind of waste.

Each of those deserves the time and attention, in the case of defense plants, of the Energy Committee; in the case of CERCLA, of the Environment and Public Works Committee. They are different problems from those we seek to serve in the Dole-Johnston bill presently pending.

Mr. President, in including Superfund and environmental cleanup

in the original Dole-Johnston amendment, we knew at the time that we included it that it would be subject to an amendment and that it would probably come out. I say ''we'' knew that; I do not want to speak for anybody else but myself. Let me say that I and my staff knew it and we discussed it, and I think the feeling was at that time that it should be included in the draft in order, first, to draw attention to the issue; second, to give some leverage in assuring that we would deal with the question of Superfund and of defense cleanup.

Indeed, we have had Senator BAUCUS, the ranking member, come and say that he is anxious, willing, and able and can virtually promise that that committee will deal with the issue.

I think there are Members who are so anxious for risk assessment to be made part of CERCLA that they want to get those assurances. I think now we have heard those assurances on the floor of the Senate.

I hope, therefore, with those assurances, that the committee such as Energy and Natural Resources, with respect to defense plants, can proceed and do our business and enact the legislation that Senator MURKOWSKI and I presently have pending. I hope that the Environment and Public Works Committee will expeditiously report out that bill again which we passed last year, and that we can get on and pass this risk-assessment cost-benefit legislation presently pending.

Mr. President, I am getting more hopeful and more confident as the hours pass, that the spirit in this Chamber is such that it will allow the Senate to pass this bill with a strong bipartisan effort. I think acceptance of this amendment will be a strong indication of that. I hope we can vote soon.

Mr. CAMPBELL. Mr. President, I rise in strong support of the amendment by the Senator from Montana.

Count me in among those who believe that there are serious problems with the superfund program and the Energy Department cleanup program. It is plain to me that we are spending a lot more money, and a lot more time, on lawyers and bureaucracy than we are on getting these cleanups underway.

I agree that the superfund program is not working, and I think we need to make major changes to make it work better. But not at the price of further delay and further bureaucracy that will delay these cleanups even longer.

The Rocky Mountain Arsenal outside of Denver was used for years as a production facility for chemical munitions by the Defense Department. Since the 1950's it was used to produce pesticides. The defense department and the Shell Oil Co. left a pretty tough mess.

In 1984 the site was listed as a national superfund site, and it is now more than a decade that the site has been under study, and significant cleanup has already occurred to resolve immediate threats to human health and the environment. Just last month a conceptual agreement was reached on a final cleanup plan at the arsenal. That agreement must go through the public comment process and a final decision should be made by early next year.

If this amendment is not accepted, the door will be open to anyone to file a new challenge to this long, tortuously negotiated accord based on the new rights created under this bill to seek additional cost benefit and risk analysis studies.

Some Senators may be familiar with the Summitville mine disaster; since that mining company declared bankruptcy and left my State with a massive cleanup problem, we've seen decisions made and cleanup projects begun. Again, I don't want this bill to be the cause of any further delay in getting this critical work underway.

I have other, tough cleanup problems in my State, at Leadville, at Clear Creek, and many other sites. I want this program to work better, and I'll be supporting major changes in the program when we consider reauthorization later this year.

As any of my colleagues who are involved with superfund know, that process takes too long and our constituents get very frustrated when they see a lot of planning and not much actual cleanup. I don't want to extend that process even a day longer than necessary, and so I urge my colleagues to support the Baucus amendment.

Mr. THOMAS. Mr. President, I ask unanimous consent to proceed in morning business for 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Wyoming is recognized.

Mr. THOMAS. I thank the Chair.

(The remarks of Mr. THOMAS pertaining to the introduction of S. 1031 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, we had a lot of discussion in the last 3 days on the need for regulatory reform. We have had a lot of horror stories presented about undue regulation and what it has done to small business people and farmers of the United States. That impacts negatively on everybody as it inhibits the creation of jobs, as it brings undue costs to the operation of a business and, in many instances, with harm to the public if nothing is changed.

I have taken the floor several times to discuss some of these problems with existing rules and regulations, or the implementation of those rules and regulations. I want to address another issue like I did yesterday on the subject of wetlands.

Before I do, I want to visit a little about the general atmosphere of the debate here on this regulatory reform bill in the U.S. Senate. We are led to believe that all of our concern about public health and safety and the environmental policies are going to be thrown out the window with the adoption of a regulatory reform bill. It is not, because our bill does not change any of the substantive laws that are on the books in each one of those areas.

If it did, that is what we would call, in this body, a supermandate, one law overriding others. In fact, we recently adopted an amendment just to make it more clear that there is nothing in this legislation that is a supermandate. And we have also been hearing a lot of other concern expressed, mostly on the Democratic side of the aisle, about bad aspects of this legislation.

I would plead with the Democratic Members of this body who have been fighting this bill so hard, that they should want Government to work well. They should want Government to work efficiently. They should want Government to work in a cost-effective way. They should want Government to serve people rather than people serving the Government.

Another way to say that is, they should want Government to be a servant of the people rather than a master of the people.

I know Democratic Members of this body believe that all Government is good. And I know that they believe that basically Government means well and does well, and they are willing to give the benefit to big Government, that when there is some doubt about whether Government is really going to do well, that we ought to err on the side of Government doing it. That is a legitimate political philosophy that I find no fault with. I do not accept it, but it is a legitimate political philosophy that we can have in our system of government.

What does that have to do with the bill that is before us and my pleading with the Democratic Members of this body? There is nothing wrong with believing in big Government. There is nothing wrong in believing, if you think it is best for the country, in a regulatory state. There may not be anything wrong with believing that regulators ought to dominate more so than the free market system determinations made in our economy.

But the very least, if you believe all those things, you should make sure that the regulatory state, that the big Government you believe in, will actually work well and effectively deliver the services that you want delivered. And the fact of the matter is this big Government, this big regulatory state that you like so well not only does not deliver well, but the rulemaking process is much more costly than it need be. It impinges upon the marketplace much more than need be to protect the public health and safety and the environment. And it just does not work very well because it never delivers a decision. You know it is just awfully difficult to get a decision out of the Government, and particularly when

you have two Government agencies fighting each other.

The very least—I plead with you—if you believe in the big Government that you practice, that you ought to be for making it efficient and effective. And your big Government and your big regulatory state, we are saying on this side of the aisle, does not work very well, and we see S. 343 as a process of making sure that it is cost effective because of the cost-benefit analysis, that it has a sound basis because we require scientific determinations and risk assessment, and that it should not be a law unto itself. We protect against that in this legislation through congressional review of regulatory action and through judicial review of regulatory action.

I hope during this debate—and this will be the fourth time I have been involved in an example just in my State—my State is only 1.5 percent of the people in this country, but some horror stories have taken place in my State. Remember the first day I spoke about EPA enforcing one of its rules on toxic waste. They had a paid informant that was a disgruntled employee of a local gravel company, the Higman Co., in a little town of Akron in northwest Iowa. The information was not correct, but they decided to invade his place of business. One quiet morning they came in with their shotguns pumped, their bulletproof vests on, 40 Federal and local law enforcement people to find that toxic waste and to arrest the manager.

He tried to find out what was the big deal. They told him to shut up. They stuck the gun in the face of his accountant. She is a nervous wreck yet as a result of that action. It cost him $200,000 of lost business and legal fees to defend himself on a criminal charge that he was not found guilty on because there was not any toxic waste buried in his gravel pit because this process of making a determination was bad.

I told you the next day about how there is an EPA regulation on the books under the Clean Air Act affecting the grain elevators in the rural communities where farmers send their grain for processing and for sale. We have 700 of these grain elevators in my State. They are charged with proving to the Government that they do not pollute. The initial determination of that is to fill out a 280-page document for EPA, which some of these elevators are paying $25,000 to $40,000 of consulting fees to help get filled out properly. Then once they are filled out properly and go to the EPA, only 1 percent of the 700 are going to come over the threshold determined by EPA that you are a polluting business.

But what really is strange about that rule is this: EPA assumes that you are going to be polluting 365 days a year, 24 hours a day, when the problem that EPA is trying to get at is a seasonal problem in which the elevators are operating for about 30 to 45 days out of a year in which there might not be any problem whatsoever.

They have each one of these little grain elevators supposedly in business processing grain every day of the year, every hour of the day. Any one of these, under that assumption, would have to have the entire corn crop of the entire United States, 10.03 billion bushels, processed through any one of these little businesses.

Then I told you next about the farmer in Mahaska County, IA, that bought a farm in 1988. And in 1989 he got permission from the Soil Conservation Service for clearing some trees and improving the drainage system. He had the approval of a Government agency of everything he did, even the approval of the Iowa Department of Natural Resources.

Within just a few months the Corps of Engineers threatened to fine him $25,000 a day because he was doing something without one of their permits saying it was a wetland when it was not a wetland. All you have to do to prove that is to drill little holes in the ground and find out how close the water is to the surface. And it was not 4 to 5 feet. In order to be a wetland you have to have 7 days of continuous water on the land. Yet, they wanted to fine him $25,000 a day for what another Government agency said he could do. Then later on that first Government agency said he could do it. They backed off and said they had made a mistake. Then he appeals it through the local, the State, and the national office. Here it is 1995, and he still does not have a determination of what he can do with that land.

As I said to the big Government Democrats that are opposing our bill, it seems to me that, if you want to believe in big Government, OK. But at least Government ought to be able to give a constituent some sort of an answer. If you say they have done something wrong, they ought to be able to get an answer. You ought to be able to have the Government agencies agree among themselves on what the policy is.

This is a perfect example of Government out of control. This young Mahaska County farmer still does not know where he stands with this land. He could potentially pay a lot of fees. In the meantime, he has paid a lot of money to try to get what he thought he had the right of in the first place by getting a Government agency to say what he can do and not do to some of his land.

There is no reason why we need four different Government agencies' definition of what a wetland is. How do you expect a poor farmer to understand what a wetland is, or even a rich farmer understand what a wetland is if four Government agencies do not know what a wetland is?

In fact, in the farmer's case I just told you about, the determination of what was a wetland or not a wetland was based on a 1989 Corps of Engineers manual that is not even being used anymore.

(Mr. GRAMS assumed the chair).

Mr. GRASSLEY. Mr. President, in my opinion no other area of regulation needs reform as desperately as wetlands regulation. No less than four Federal agencies claim jurisdiction over agricultural wetlands and these agencies often use conflicting manuals and procedures in delineating and regulating the use of wetlands.

I have addressed this body several times in the past regarding the complex, confusing, illogical, and downright burdensome way that the Federal Government regulates wetlands in agricultural areas.

Most of my colleagues must agree with this assessment because in March, the Senate passed by unanimous consent, a moratorium on new wetland delineations. Subsequently, the administration agreed with the Senate and imposed its own moratorium. This will allow Congress the opportunity to reform existing wetlands policy.

Even if Congress does not act, however, S. 343 will force agencies to recognize common sense and sound science when promulgating wetland regulations. And when agencies begin to act in a rational manner, maybe we can avoid situations like the one in Iowa that I am about to describe.

Mr. President, as I travel across my State and talk to farmers and other property owners, I hear many stories of senseless regulations and bureaucratic nightmares. But the problems of a farmer in Greene County, IA, may be the most vivid example of the need for common sense in rulemaking.

This particular farm in Greene County has been continuously cropped for almost 90 years. The original drainage system was installed in 1906.

As this chart illustrates, from 1906 until 1992, the land was framed and no wetland existed on this part of the farm. In 1992 this all changed.

During the summer of 1992, the local drainage district decided to replace the original system with an open ditch. This was all carried out in consultation with the Soil Conservation Service.

Prior to the construction of the ditch, the owner of the farm was informed by the SCS that the ditch would result in the creation of a small wetland, about 150 feet on each side of the ditch.

After the ditch was installed, however, the SCS district office changed its mind and classified 14.2 acres as ''converted wetland.''

Now once a farmer has part of his farm declared a wetland, it can no longer be cropped. So in effect, the Government is depriving this farmer of the economic use of his own property, even though the farmer did not create the wetland, and even though the land had been farmland, not a wetland, for the past 90 years.

At that point, the only recourse available to the farmer was through

the appeals process. In this case, however, the appeals process only made the situation much worse.

Before the first appeal, the SCS had already changed its initial wetlands classification of 14.2 acres to 10.8 acres. The SCS area office confirmed this designation during the first appeal. At the second appeal, the State SCS office decided that the wetland was actually 17 acres. And at the final appeal level, at the SCS national office, the wetland was determined to be 28.2 acres.

Mr. President, as you can see on this chart, this farm was cropped from 86 years. But then, through no fault of the farmer, the SCS decided there was a wetland on this land. And this wetland apparently was expanding rapidly—from 10.8 acres to over 28 acres in less than 2 years

Keep in mind that nothing had happened during this time that actually changed the size of the wetland. The farmer did not farm the land. The drainage system was not expanded. And no additional water was present in the area.

The only difference was the way each level of the agency interpreted the wetland regulations. And undoubtedly, the lack of common sense contained in the underlying regulations caused this confusion within the agency.

All of this sounds ridiculous until you consider that a real price is paid by our citizens who are subject to these regulations. The farmer in Greene County, IA will lose thousands of dollars in future income because the bureaucracy decided that he could not farm his land. Even though this land had been farmed continuously for the past 90 years.

It is cases such as this that undermine the faith that Americans have in their Government. It is cases such as this that motivate the electorate to throw out a party that has been in control of Congress for the past 40 years. And if S. 343 will help just one person like the farmer in Greene County, IA, then the Senate should pass this bill and the President should sign it into law.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I am about to propound a unanimous-consent request that I think will get us to the Boxer amendment. I ask unanimous consent that, following the remarks of myself and Senator MURRAY—I will not be very long—the Johnston amendment be laid aside and that Senator BOXER be recognized to offer her amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Reserving the right to object. And I appreciate my friend from Utah working on this issue of the environmental cleanup, and I hope we will successfully do it. I note that we have been on the amendment for about 3 hours and that it is not a delay coming from this side. I simply mention that to say that I hope we will be able to get time agreements from now on and be able to move expeditiously. We made great progress today so far. And we will continue.

Mr. HATCH. I appreciate that.

Mr. GLENN. Reserving the right to object. I wonder if it will be possible to get a time agreement. Will the Senator give us any idea how much time it will take? We are going to try to—I will tell everybody I would like to get time agreements on everything that comes out from now on.

Mr. HATCH. I do not think Senator BOXER——

Mr. GLENN. We have to wait on the time agreement. She can go ahead and proceed. I will not object to the UC.

Mr. HATCH. Can I reverse the UC, because I understand Senator MURRAY is only going to take 3 or 4 minutes.

Mr. GLENN. Senator BOXER has to come to the floor.

Mr. HATCH. Senator MURRAY is going to speak on Superfund. Why do I not reverse that, have her speak first, I will speak second, and then Senator BOXER can offer her amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. MURRAY addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I thank the Senator from Utah. I simply rise today to support the Johnston-Baucus amendment that strips the Superfund provisions from this bill. It touches on one of the most pressing issues facing my home State of Washington: the cleanup of the tons of nuclear waste that is contained at the Hanford Reservation.

The bill before us specifically targets Superfund sites and subjects activities costing more than $10 million to immediate cost-benefit analysis and risk assessment. This assessment will be required even where agreements have been reached and cleanup has already begun. All cleanup would come to a screeching halt so that the Government could analyze the benefits of cleaning up toxic waste.

Hanford cleanup has come under intense and justified scrutiny by this Congress. Its critics have railed that it has cost billions of dollars and has resulted only in reams of documents, not any actual cleanup. This bill would only exacerbate those problems. Cleanup that is finally getting underway would stop while the Department of Energy conducted potentially dozens of more analyses on the benefits of cleaning up the nuclear waste that today is seeping toward the Columbia River.

Mr. President, there is a lot we do not know about the risks of radioactive waste. We do not know how to clean it up, where to store it, or how fast it migrates, or any number of things. Because so much is unknown, a detailed generic cost-benefit analysis and risk-assessment process would be endless and very costly.

Let me add, however, that while I do not support the cumbersome approach taken in the current bill, I do believe the Hanford site and other Superfund sites will benefit from a cost-benefit analysis. In fact, I will encourage us to move toward a bill that incorporates risk assessment and cost-benefit analysis into the decisionmaking structure at Hanford. We should try to develop a bill that requires consideration of costs but does not impose inefficiencies or unnecessary taxpayer-funded analytical costs that result only in reports, but we should not do it on this bill.

Finally, I would like to remind this body that the Department of Energy is facing tremendous budget cuts and possibly elimination. Burdening it with this review process while at the same time demanding that it improve the pace of its cleanup and reduce costs is a recipe for disaster in my home State.

This bill is not the place to make the reforms most of us believe are necessary to improve Superfund. The place to make those changes is in reauthorization of CERCLA before the authorizing committee with its indepth knowledge of this important law.

For these reasons, I urge my colleagues to support the Johnston-Baucus amendment to strip the Superfund provisions from this bill. Both current and future citizens who live near our Nation's nuclear waste facilities will thank you.

I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

RACIST ACTIVITIES AN OUTRAGE

Mr. HATCH. Mr. President, I am going to divert from this bill for a minute on a matter that I consider to be of extreme importance. I have been reading some accounts in the newspaper, and I would like to take a moment to address something that deeply distresses me.

According to certain press reports, several current and former Alcohol, Tobacco and Firearm agents participated in a so-called good old boys roundup, an event that is alleged to have involved hateful, racist conduct.

As many of my colleagues are no doubt aware, this event involved hundreds of Federal, State, and local law enforcement agents. When African-American agents tried to attend the event, however, they were turned away. According to various news reports, participants at the event displayed blatantly racist signs and sold T-shirts displaying, among other things, Dr. Martin Luther King's face behind a target and a picture of an African-American man sprawled across a police car with the words ''Boys on the Hood.''

Apparently other things were available for sale that are, frankly, too despicable to even be mentioned on the Senate floor. I can only express my outrage and anger that such activities of this type could occur in America and especially when law enforcement officials are involved.

Mr. President, it means something to me and I think every American—it means something—for a person to be a law enforcement officer. Among other things, it means that the American people have placed their trust in that law enforcement officer. It means that they represent the people, all the people. And it means that they have taken an oath to uphold and enforce the law, and if we cannot rely on law enforcement officers to do that, upon whom can we rely?

That any American, but especially any law enforcement officer who holds a sacred trust, would engage in these racist activities is an outrage, and it must be condemned. To be an effective law enforcement officer, you must have the trust and the respect of our people. Indeed, law enforcement officers take an oath to defend the community. When law enforcement officers engage in racist activities, they betray the trust of the people and they disgrace the uniforms that they are empowered to wear.

This is not only a concern of African-Americans, this is a concern to all Americans. We have a right to expect that our law enforcement officers will treat all citizens equally. If the press reports are true, and these officers engaged in hateful racist conduct, not only must their actions be condemned, but they should be dismissed from their positions, for no one in whom the people's trust is placed should be allowed to destroy that trust by engaging in such hateful behavior.

No doubt some of the participants will say that they were aware of what was going on but did not directly participate. I would ask them, What were you thinking? If you were at a party and people were selling drugs, would you not do something as a law enforcement officer? Those who would stand by while others engage in this kind of conduct are no less guilty than those who turn their heads when crimes are committed on the street. We simply cannot tolerate any sort of racist conduct on behalf of our law enforcement officers, not of any sort by any law enforcement officers.

I hope Director Magaw will take swift action to determine whether these allegations are true and, if so, to dismiss those who are involved.

Similarly, I would tell State and local law enforcement agencies to purge themselves of agents who would violate the people's sacred trust by engaging in such hateful activities. This is America. We are one Nation under God. We are a Nation that guarantees liberty and justice to all people. When one citizen is mistreated regardless of race, color, or creed, all citizens should be outraged. And when a person clothed with the authority of the people engages in hateful conduct, that person's conduct must be condemned by the people. We simply cannot condone racial discrimination in any of its vile forms.

Having said that, I have to say almost all law enforcement officers are good, decent people, but those who betray the public trust by displaying deplorable judgment and terrible prejudice, they forfeit that trust.

Let me be clear that this is not the voice of political correctness. Being a law enforcement officer is a public trust, because public-safety matters of life and death are in the hands of law enforcement officers. The overwhelming majority of our law enforcement officers are really good people. But if someone authorized to wield a gun in the name of the law can organize and find comfort at gatherings such as the one I have described, that person does not deserve the people's trust.

Faced with a threatening situation, or the perception of a threat, can we be confident that such an agent would not react based on prejudice if the situation involved an African-American or some other minority person?

This is not a matter of concern only to African-Americans, I might add. Prejudice is not so readily limited. But I would not want someone exhibiting such terrible judgment and prejudice enforcing the law with respect to me either. If it is determined that these various officers have done these things and that these accounts are true, then, I reiterate, those law enforcement agents who knowingly participated ought to be fired. They ought to be terminated. We should not have them in positions of trust among the people. They should certainly not wear the badge of the Alcohol, Tobacco, and Firearms Bureau.

Having said that, I hope that the director will get behind this, find out exactly what the true facts are, determine who the people are who are culpable and responsible for this kind of activity. I think they should be fired on the spot.

It is just one of those things that you just cannot tolerate in a society as great as ours.

I yield the floor.

COMPREHENSIVE REGULATORY REFORM ACT

The Senate continued with the consideration of the bill.

Mr. DOLE. Mr. President, I know there has been a unanimous-consent agreement. Do we have any time agreements or just consent to start something?

Mr. HATCH. We did not have any time agreements because the Senator from California was not here. Now that she is, we would like to work out a time agreement.

Mr. GLENN. If the majority leader will yield, we are going to try to get time agreements for everything coming to the floor from now on. I hope we can get 15 minutes a side for everything that comes to the floor. We are going to propose that. I hope people listening can think about this and agree to it. We have been wasting time with people talking, and also on various subjects that do not have anything to do with the legislation that we are considering here. So I hope everybody can come up with time agreements, if possible.

Mr. DOLE. In some cases, there may be second-degree amendments on either side. So it may take a bit longer than 30 minutes.

Mrs. BOXER. Mr. President, I ask the majority leader, if he will yield on that point, I feel very strongly that I want to have a vote on my amendment. If there is going to be a second-degree, I will not agree to a time agreement. I will be happy to agree to 15 minutes on each side, but if there is a second-degree, I cannot agree because there is no way for me to get a vote on my underlying amendment. It is a problem for me.

Mr. GLENN. I think that would be the general attitude all the way through this thing. Unless we know what is coming up on the second-degree amendment, we are not likely to agree to a time agreement on it. If we can agree to these things without second-degreeing everything——

Mr. HATCH. But we do not even know the form of the amendment.

Mr. DOLE. We do not even know what the first-degree amendment is.

Mr. HATCH. That is the way the Senate operates.

Mr. GLENN. Then maybe we cannot get time agreements.

Mr. DOLE. Mr. President, at 11 o'clock, we said we were going to start mowing them down around here, and I know the Senator from Louisiana was surprised when I filed cloture. But, frankly, I was surprised when he offered an amendment to knock out Superfund. I did not know that was going to happen. So there has been a double surprise here. We are trying to come to grips with that amendment.

In the meantime, I think there has been agreement to go to the amendment of the Senator from California. But to suggest that we cannot get time agreements and you cannot offer second-degree amendments, then I think we are going to be in real trouble, because both sides always reserve the right to offer second-degree amendments. It seems to me that it is something we need to work out before we start.

Mr. President, the liberal opponents of commonsense regulatory reform must be celebrating after watching some of this week's reports on the evening news, and reading some of the stories and columns in some of our most distinguished newspapers.

Last night, a report on ABC's ''World News Tonight'' claimed Republican supporters of regulatory reform are ''on the defensive.'' And it is no wonder, considering how the media have fed the American people a steady diet of phony claims that we are out to promote tainted meat and unhealthy food.

Liberal New York Times Columnist Bob Herbert a few days ago took a page

out of the liberal consumer activist playbook, labeling our regulatory reform bill ''An all-out assault on food safety regulations,'' adding that it ''Would block implementation of the Agriculture Department's meat safety initiative for 2 to 3 years, and probably longer.''

If this outright distortion wasn't enough, listen to this from Margaret Carlson's ''Outrage of the Week'' on CNN's ''Capital Gang'': ''Senator BOB DOLE, under the guise of regulatory reform, is letting the meat industry lawyers block this [meat safety test].'' Wrong again.

One network aired a report Monday night that included the following, and I quote:

With Senator Dole's regulatory reform bill, industries could challenge rules they considered too costly or too burdensome. Thirteen-year-old Eric Mueller died in 1993 from E. coli poisoning after eating a fastfood hamburger. His father says any delay in adopting new meat inspection rules is a travesty.

This is indeed a tragic story. The only problem is, this report, like so many others, was simply wrong in its suggestions about this bill.

Our legislation has always made it explicitly clear that regulations are exempted from any delay if there is ''an emergency or health or safety threat.'' Additionally, the Agriculture Department has already conducted a cost-benefit analysis of the meat inspection rule and it passed. But the facts did not stop that network from reporting Monday night that, ''A delay is looking more and more likely.''

However, on Tuesday, if it was not clear enough already, we specifically added to the bill the words ''food safety, including an imminent threat from E. coli bacteria.''

But that did not stop the media's drumbeat on food safety. Last night, a network anchor for whom I have great respect claimed that on regulatory reform, Republicans ''went further than the public may want on the issue of food inspection.'' Wrong again. I do not know how many times we have to say it to get the media to understand the fact that this bill does not compromise food safety. Yesterday, the former head of the FDA and four eminent scientists and physicians spoke at a press conference to explain how our bill protects food, health, and the environment—but the media did not seem to notice. I did not see it anywhere. It was not on ABC News, CBS or NBC. They get some liberal Senator on the floor to make some claim, and that was the news. That was the liberal spin and the one the media jumped to in a second.

But ABC did not stop with the issue of food safety. Then they broke out the chainsaws, the strip mining, pesticides, potentially dirty drinking water, and cute endangered animals in their effort to explain the impact of regulatory reform. They do not know any bounds once they get carried away with the liberal spin in this body.

Mr. President, these are just a few examples of the kinds of distortions we have had to confront on this bill. And I am not the only one who has noticed this trend. According to a study released last week by the Advancement of Sound Science Coalition, ''media coverage of the congressional debate over environmental regulatory reform slants 'clearly against the regulatory revisions.''' According to Dr. Robert M. Entman of North Carolina State University, who conducted the study, there was a 3-to-1 negative imbalance in news stories about reform between last November and this May 11. Not surprisingly, the study claims that 74 percent of paragraphs that evaluated reforms were critical, criticism reached 87 percent on editorial pages, and 70 percent of the stories on the commercial television networks and in weekly news magazines criticized reform. I ask unanimous consent that the Advancement of Sound Science Coalition's statement about its study be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MEDIA REPORTS SLANTED AGAINST REGULATORY REFORM EFFORTS, STUDY SHOWS

WASHINGTON, DC, July 7, 1995—Media coverage of the Congressional debate over environmental regulatory reform slants ''clearly against the regulatory revisions,'' according to a study released today by The Advancement of Sound Science Coalition (TASSC).

''While some outlets refer in favorable terms to the general idea of reform, most devote far greater space and time to denouncing the specific legislation calling for rigorous application or risk and cost benefit analysis,'' according to the study, conducted by Dr. Robert M. Entman, Professor of Communication, North Carolina State University and Adjunct Professor of Public Policy, University of North Carolina (Chapel Hill).

''This study demonstrates once again that the media, whether it is consciously aware of it or not, is portraying important, scientific issues in the same 'who's up, who's down' play by play style of reporting that they use in describing political campaigns or football games. While all stories deserve more balanced treatment, stories involving science cry for more fair reporting,'' said Dr. Garrey Carruthers, Chairman of TASSC, a national organization of scientists, researchers, academicians and others.

The most striking finding in Dr. Entman's study is the ''negative imbalance in covering the proposed reform legislation.'' Dr. Entman said that there was a three-to-one negative imbalance in news stories about reform. Fully 74 percent of paragraphs that evaluated the reforms were critical. On editorial pages, criticism reached 87 percent, a seven-to-one negative ratio. Among his other findings:

70 percent of the stories on the commercial television networks criticized reform.

Weekly magazines surveyed also were 70 percent critical.

Certain key words function to reinforce negative impressions. For example, the word ''lobby'' or related words show up 10 times as often when referring to those supporting reform as those opposing it, even though both sides are lobbying the Congress.

Headlines, which frame the audience's emotional response to the content of the story, were often emotional or slanted opposed to the reform ideas. For example, Time magazine's ''Congressional Chain Saw Massacre'' or Newsday's ''GOP Frenzy Is Gutting Safety Rules.''

Visual images portrayed supporters of reform as enemies of the environment. For example, scenes of industrial plants with numerous pipes and tanks; smokestacks spewing smoke; a large bulldozer. Viewers were repeatedly exposed to ''archetypal images of pollution and danger,'' the report states, images likely to ''stir negative emotions toward reform.''

While analysis of the ''why'' of this media slant was beyond the scope of Dr. Entman's study, the report says, ''reasons go beyond the standard interpretation of liberal bias. They include the media's tendency to oversimplify; journalists' lack of training in policy analysis; and the commercial incentives that news organizations interpret as requiring appeals to emotion over cognition.''

Dr. Carruthers said TASSC commissioned the study because ''we want to offer information on how scientific issues are communicated to the public as another means of ensuring that only sound science is used in making public policy decisions.''

''Too often, legislation or regulations are the result of political decisions, where the science does not back up the action. One way to better understanding this phenomena is to understand how the media portray scientific issues. TASSC is committed to pointing out not only when unsound science is used to make a decision, but also to point out the media's important role in the public's understanding of science and research,'' Carruthers said.

To conduct his study, Dr. Entman examined 29 major newspapers across the country, Time, Newsweek and the three broadcast network evening news programs. Stories review included those published or broadcast between November 1, 1994 and May 11, 1995.

Mr. DOLE. Mr. President, I know the media have a tough job to do. But if I believed everything I saw on the evening news or in the newspapers, I would vote against this bill, too. I imagine if all of the anchor people were on the floor, they would vote against it because they would not read it. They would just listen to some liberal on the other side of the aisle and swallow it all and say ''I am against it.'' Fortunately, the facts are on our side, even if some folks in the media are not.

This is not a question of partisanship, not a question of anything but commonsense reform. Maybe those who report the news at the big networks do not worry about things that people have to put up with, the people in my State of Kansas, like businessmen and women, farmers, and ranchers. That is not their concern. They buy into ''the more Government the better.'' If you have little Government, let us have a little more regulation, which costs the average family $6,000 a year.

So we will continue to try to correct the record. We know that it will never make the news. In fact, I challenged the media yesterday, when we had all these imminent scientists and a former FDA commissioner there, to report something they said. There was not one peep, because they were trying to give us facts, not the liberal spin. It makes a great difference in this body and in this town.

Mr. GLENN. Mr. President, I would like to reply to the distinguished majority leader's statement. I want to make it very clear that in S. 343 we say

that if there is a real problem, the agency can make an exception and say that the rule can go in.

But the rule that could involve safety, health, E. coli, and cryptosporidium and all the rest of these things, in the original legislation, could only be in effect 180 days, to give them a chance to take into account all the requirements of the law, and then unless they had it done within 180 days, the regulation that protected the health and safety of people in this country would be negated. It would no longer be effective.

Now we have changed that on the floor this evening with the proposal by Senator JOHNSTON that makes it 1 year instead of 180 days. Most of these regulations take 3, 4, 5 years to come into final form. We still have the danger there that we can, with this legislation, have a requirement to complete all this re-analysis in 180 days. It is not done, the regulation goes out, and whether it dealt with E. coli, cryptosporidium or the other things that have caused actual deaths in the country and we know are dangerous, and not need a new investigation, but the regs would be knocked out.

Mr. ROTH. Mr. President, will the Senator yield?

Mr. GLENN. I am happy to yield to the Senator.

Mr. ROTH. It is true under the original legislation that not later than 180 days after the promulgation of the final major rule to which the section applies, the agency shall comply with the provisions of the subchapter, and as therefore necessary revise the rule.

But I am not aware of anywhere where it says the rule is terminated.

Mr. GLENN. The rule could be judicially challenged because it had not complied with the requirements of the legislation, so there would be a judicial challenge. The Senator is right. There would have to be a judicial challenge, but we are such a litigious society today, I do not doubt there would be multiple lawsuits if there is any crack in the law that can benefit a meatpacker or food processor or whoever it may be.

Mr. ROTH. I do not think the court would terminate the rule. A person could go into court and ask that they force the agency to comply with the requirement that the analysis be made.

I think the important point to recognize and understand, there is nothing in this legislation, unless the distinguished Senator form Ohio knows something I do not know, that provides for the termination of the rule.

Mr. GLENN. Let me reverse this. Does the distinguished Senator from Delaware——

The PRESIDING OFFICER. Under a previous order, the order of business was to recognize the Senator from California. If the Senator would wrap this up in a few seconds.

Mr. GLENN. Mr. President, I ask unanimous for 2 more minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GLENN. I ask my distinguished friend from Delaware, is there anywhere in there that says there cannot be a judicial challenge? I know there is not. That means there would be a judicial challenge, the analysis would not be completed, the time would have run out.

Mr. ROTH. The question is, was it violated? If they do not make the study within the times required, then, yes, they can go into court and force the agency to make the study.

There is nothing in it that requires the termination of the rule.

Mr. GLENN. The Senator does not think there would be a judicial challenge?

Mr. ROTH. Not under these circumstances.

Mr. GLENN. I think that is guaranteed in this. We would have a judicial challenge to this, and the rule would be out because the studies had not been completed.

Mr. ROTH. It says here in the legislation a major rule may be adopted and may become effective without prior compliance with the subchapter. It specifically provides the rule shall become effective.

Mr. GLENN. Followed by subchapter—if the agency in good cause finds conducting cost-benefits impractical and so on, but then not later than 180 days, which is now changed to a year after promulgation.

The final rule to which this section applies, ''the agency shall comply with the provisions,'' if they have not done so, it would be subject to judicial challenge. With the provisions of this subchapter, each one of those subchapter provisions would have to be met, or the judicial challenges, and it is thereafter necessary to revise the rule, and if they have not done that, it would still be subject to judicial challenge.

Mr. ROTH. But nowhere does it say the rule terminates. In fact, to the contrary. It says the rule goes into effect. The language that the Senator just quoted does give the right to go into court and require the agency to make the appropriate study. That is all it does.

The PRESIDING OFFICER. Amendment No. 1517 is set aside. The Senator from California is recognized to offer an amendment.

AMENDMENT NO. 1524 TO AMENDMENT NO. 1487

(Purpose: To protect public health by ensuring the continued implementation of mammography quality rules)

Mrs. BOXER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California [Mrs. BOXER], for herself, Mrs. MURRAY, Ms. MIKULSKI, Mr. LAUTENBERG, Mr. BRADLEY, Mrs. FEINSTEIN, Mr. DORGAN, Mr. KENNEDY, Mr. REID, Mr. BUMPERS, Mr. BIDEN, Mr. LEAHY, Ms. MOSELEY-BRAUN, and Mr. DASCHLE proposes an amendment numbered 1524 to amendment No. 1487.

Mr. DOLE. Mr. President, I send a second-degree amendment to the desk.

The PRESIDING OFFICER. Is there objection to dispensing of the reading of the amendment?

Mrs. BOXER. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. HATCH. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. I object.

The PRESIDING OFFICER. The clerk will report.

The amendment is as follows:

On page 19, line 7, strike the period and insert the following:

''; or (xiii) a rule intended to implement section 354 of the Public Health Service Act (42 U.S.C. 263b) (as added by section 2 of the Mammography Quality Standards Act of 1992).''.

AMENDMENT NO. 1525 TO AMENDMENT NO. 1524

Mr. DOLE. Mr. President, I send a second-degree amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Kansas [Mr. DOLE] proposes an amendment numbered 1525 to amendment No. 1524.

The amendment is as follows:

In lieu of the matter proposed to be inserted, insert the following:

It is the sense of the Senate that nothing in this Act is intended to delay the timely promulgation of any regulations that would meet a human health or safety threat, including any rules that would reduce illness or mortality from the following: heart disease, cancer, stroke, chronic obstructive lung diseases, pneumonia and influenza, diabetes mellitus, human immunodeficiency virus infection, or water or food borne pathogens, polio, tuberculosis, measles, viral hepatitis, syphilis, or all other infectious and parasitic diseases.

Mr. DOLE. Mr. President, I believe this is a responsible second-degree amendment, that we can dispose of a number of these issues in the spirit expressed this morning by the Democratic leader and managers of the bill so we can move on and try to complete action on this bill no later than next Tuesday. It is offered in that spirit, the spirit of cooperation.

My view is it is a good amendment. I hoped it might be acceptable. It seems to me that it would save hours and hours of debate here and put to rest all the arguments that some people like to make about which party or which side of the aisle is more concerned about some of the health and safety regulations. We are ready to stipulate we are just as concerned as they are on the other side. We think this would lay that to rest. I would hope the amendment would be accepted.

Mr. HATCH. Mr. President, we have now been on this bill 6 days and we have handled very few amendments. One reason is that everyone wants to exempt some rule or other, or some special interest or other, or some issue or other, from the provisions of this

bill. This bill's whole purpose is to make sure that the best available science is applied to regulations.

Now, the distinguished Senator from California is very sincere in bringing up her amendment. But, it is another in a series of amendments that we will spend the next 3 months debating if we do not find some way of making clear that the only purpose of this bill is to improve the regulatory process and that everybody should support that goal.

No one is more concerned about breast cancer than I am. It is a grave, grave disease, and each and every Member in this body is disturbed about its incidence and the increase in its incidence. I do not want to see standards delayed unnecessarily any more than Senator BOXER or Senator MURRAY or Senator GLENN.

First of all, I think it is important to know that the Mammography Quality Standards Act was enacted in 1992, 3 years ago. If the proponents of this amendment want to talk about hamstringing the FDA from issuing regulations on the bill, I think they ought to ask themselves, ''What has the FDA been doing in the almost 3-year period since the bill's enactment?'' They have controlled the FDA for a year and a half of that time.

I understand that my colleagues have stated today that new, proposed regulations are expected this fall to implement the bill. I think we ought to ask ourselves, ''Why has the FDA allowed almost 3 years to elapse before the regulations are issued?''

I can answer part of that question. The program is already up and operating. The program is already up and operating.

As I believe Senator GLENN noted earlier, the program is operating under interim final regulations issued on December 23, 1993. Interim final regulations are, by definition, final. They have the full force and effect of law. There is no requirement that they be made final.

I would just like to ask my colleagues, ''What public health issues have been raised that need to be addressed now in new regulations?''

The second thing I would ask is this, ''If these regulations are such a priority and are needed to save women's lives, then why, on May 8, when the administration issued its regulatory agenda for the year—and I am holding the Federal Register which contains that agenda—then why did the administration when it issued all of its regulatory priorities and set target dates for each regulation, why did they not list a projected date for the MQSA final regulation?

In fact, they did not list an October date or a September date or any date. Ten weeks ago they talked about the current interim final regulation. They did not even mention a new, proposed regulation in the book that was supposed to outline the whole regulatory agenda for the government. In other words: It was not a crisis then, so why is it a crisis today?

I know my colleague, Senator BOXER, is worried that the Act would get caught up in the $100 million threshold in the bill and would be subject to cost-benefit analysis. In fact, in the administration's own regulatory plan, issued only 10 weeks ago, that is just 2½ months ago, the administration printed the following in the Federal Register: ''Mammography Quality Standards Act of 1992, Anticipated Costs and Benefits: Direct Federal costs in 1994 are $13 million.''

That is $87 million less than what would trigger this bill's cost/benefit requirements.

The administration goes on to say:

> There are approximately 10,000 mammography facilities in the United States. Approximately 8,200 have accreditation or have applied for accreditation and will not incur significant additional cost. The remaining 1,800 facilities will incur approximately $26 million in one-time costs, and recurring costs of about $27 million. Amortizing the one-time costs, the annual costs of the interim rule is about $33 million.

This $33 million is still $67 million less than needed to trigger the effect of this bill.

Thus, the OMB certified estimate, printed in the Federal Register only 10 weeks ago, was $33 million. That was 10 weeks ago.

How can it be over $100 million today? Or anywhere near $100 million now? Or even within the next number of years?

I would like to ask my colleagues who offer this amendment another question: ''Why will it take years for FDA to do a cost-benefit analysis on something as important, as significant, and as understandable as the Mammography Quality Standards Act of 1992?''

I suspect part of the reason is that FDA historically has not had a very good record of moving things through very quickly. This is abundantly true with drug approvals, now taking 10 to 15 years at a cost of hundreds of millions of dollars for a major drug. No other country in the world takes that amount of time.

Medical device approvals are also lagging way behind the expectations of Congress. This is true for countless other regulatory undertakings.

In fact, with the FDA we have an agency which is fighting S. 343 as hard as it can.

We have an agency which is sending up packets of information, raising all sorts of red herrings about this bill. We have an agency who wants business as usual, who wants to preserve the status quo, who does not want the pressures that this bill will bring upon them to do their job in a better fashion and in a better manner.

I am not sure we can count on the FDA to seriously take into account the mandates of this bill with this kind of attitude.

I would also like to ask why women should not have access to the most cost-effective procedures? I think it is important to note that our bill does not have the so-called supermandate provision. Our bill does not change any existing requirement of Federal law with respect to the need for quality standards for mammography clinics, including the quality of the mammograms, the training for clinic personnel, or recordkeeping.

All our bill does is say that in implementing the law, the agency must act in a way so that benefits outweigh costs. It goes to the process of implementation, not the need for implementation.

As one who, as I think everybody in this body knows, was very involved, with Senator Adams and Senator MIKULSKI, in drafting the Mammography Quality Standards Act of 1992, as one who has been a leader in this effort, I wish to point out that I recognize the need for that law.

But I also think both the Act and American women can benefit by subjecting the law to a cost-benefit analysis. Especially if the costs of regulation under this law reach a threshold of $100 million in this country.

I am aware that last year one rural hospital in Utah had to close down its mammography machine because of the implementing regulations.

I would suspect that this has not led to better quality mammograms for the citizens of that rural area. I suspect what it means is that women in that rural area will not get mammograms at all, because of some of the bureaucratic ensnarlments which occur in the implementation of legislation, and indeed at times, in the legislation.

S. 343 is essential and it should not be continually tested on this type of basis—which some believe is purely a political basis—when it only delays going forward on this bill.

I do not think that my constituents in that rural Utah community have benefitted by this situation. I do not think that is the way the law or the regulatory process are supposed to work.

I think that the FDA is fighting this bill with everything it can because this bill will correct a lot of the excesses out at the agency, and, indeed, at every Federal agency. It will make them do better, do a better job of regulating.

So it keeps coming back to the question of why women should not have access to the most cost-effective procedures?

As I say, I was involved in writing the MQSA. I have been involved with this issue for years, and with virtually every other health care issue.

I understand how important the MQSA is. Frankly, this bill would not have the dire effects on the MQSA that proponents of this amendment allege, even if the costs of regulation under the law should rise to the level of $100 million—which they will not according to an official appraisal by the administration just 10 weeks ago.

Let me just mention what the second-degree amendment that Senator DOLE has filed says:

It is the sense of the Senate that nothing in this Act is intended to delay the timely promulgation of any regulations that would meet a human health or safety threat, including any rules that would reduce illness or mortality from the following: heart disease, cancer, stroke, chronic obstructive lung diseases, pneumonia and influenza, diabetes mellitus, human immunodeficiency virus infection, water or food-borne pathogens, polio, tuberculosis, measles, viral hepatitis, syphilis, or all other infectious and parasitic diseases.

You know, the 10 leading causes of death have just been pretty well defined in this sense-of-the-Senate resolution. It makes it clear the Federal regulators can go right ahead and promulgate regulations that are necessary in this area.

What this bill requires is that they do it in a good, cost-efficient manner with good risk assessment considerations as part of the process.

This makes sense.

But the reason we listed all of these diseases in the amendment is that we know we are going to get papered to death on the other side with amendment after amendment with every special interest trying to exempt themselves from the effects of this bill, when in most cases they would be exempt anyway, just as mammography is. This is all for the purpose of making political statements.

We think it is time for the Senate to get around to passing this bill. We need to get time agreements and debate the serious issues that are really needed to resolved, including the amendment of the distinguished Senator from Louisiana.

I yield the floor.

Mr. GLENN addressed the Chair.

The PRESIDING OFFICER (Mr. THOMPSON). The Senator from Ohio.

Mr. GLENN. Mr. President, I point out that the second-degree amendment starts out with ''It is the sense of the Senate.'' That is all it is, a sense of the Senate. It does not give anything binding and has no standing in law whatsoever. It just says the thoughts of the Senate at the moment happen to be that.

What we are talking about is giving real protections here that the Senator from California is offering as a proposal to exempt this from some of the requirements that would be imposed upon it by S. 343.

One of the reasons she is concerned about this, of course, is because the existing rule, as has already been pointed out, is going to be improved. They have an improved regulation coming out supposedly in October. That would be subject now to all of the review processes. It would have to go back through all of the requirements that are in S. 343, the Dole bill. That does cause delay.

My colleague from Utah asks: Why can we not get it out? They have 3 years. What is the delay? If they are concerned about this, why do we not get that out?

I think there is a lack of knowledge around here about what a regulation is and how voluminous it could be. We used as an example yesterday just one. Let me give an example. This is important for people to understand. Regulations are not something you go over there for and have a little meeting, decide this is what you are going to put out, and then you put out the regulation. They are required by the law that we passed here to go through multiple procedures such as peer review, public meetings, and scientific analysis in all of these areas.

I use this as an example to show why it is not so easy to get a regulation out.

Mr. JOHNSTON. Will the Senator yield for a question?

Mr. GLENN. I would rather go through my statement. Then I will yield.

The Clean Water Act passed in 1972; was amended in 1972; an amendment passed in 1977; in 1987, it had another amendment. For the Clean Water Act, one of the things that was required was effluent limitations on metal products and machinery. It took 8 years to get that one regulation out of EPA. Could they have done it faster? I do not know whether they could have or not. But for the ''Effluent Limitations Guidelines and Standards for Metal Products and Machinery'', which is the title of it, it took 8 years to get out. This is just the index of that regulation, what is covered. I do not know how many pages it is. It is several hundred pages.

The other document we have here—this is what they were required to do by the law which we passed here. They do not dream these things up. They are by law. This is the development document for how they do the index and how they do the regs. This is the guideline for it—2 inches thick of fine paper.

Listen to this: The final documents on this regulation cover shelf space of 123 feet. To give some idea what that means, we asked the Architect yesterday how high this Chamber is. It is about 42½ feet. The regulations on this one regulation out of several hundred put out pursuant to the Clean Water Act of 1972 are 42½ feet. That means the documentation would be three piles of paper in this well to the ceiling right here—three piles of paper, and that is just one regulation and the backup substantiating documents.

Why do we need that much? I do not know. Look in the mirror, Members of Congress. Look in the mirror, Members of the Senate, as to why we required that much. We are the ones who put out the guidelines for the people as to what is required, what they have to do, and all the studies they have to make in order to make this whole thing work. That is what is required just in one regulation. That is the reason you cannot get these things out in such a short period of time.

We have had, under the Presidential Executive order, requirements to do some of the cost-benefit analysis and to do some of the risk assessment and so on that is being asked for here. Some of those things are already underway. But when we ask why they cannot get these things out faster, that happens to be one of the reasons.

I just hope that the public and the media that have been excoriated here a little bit this afternoon—not on this side of the aisle—but I hope the public and the media have been paying attention to the debate on this bill, because yesterday we spent most of the day trying and finally succeeding in getting votes on two proposals to exempt two rules now in the pipeline designed to protect our people from illness and from death:

The Daschle amendment to exempt from the potentially destructive provisions of this act a rule that protects meat and poultry from contamination with E. coli was defeated by a vote of 51 to 49; the Kohl amendment to exempt from the potentially destructive provisions of S. 343 a rule to protect our drinking water from contamination from cryptosporidium was tabled 50 to 48.

What do we want to conclude from those votes? What principles should we draw from those votes?

S. 343 has a number of exemptions built into it. No one seems to have pointed these things out. There are a number of exemptions already in this thing.

For instance, first, the IRS rules or other rules concerning assessment and collection of taxes and duties—these are all exemptions.

Second, any rule implementing international trade agreements. The Maquiladora in Mexico get an exemption, protection. For the safety and health of Americans, we do not.

Third, any rule that authorizes the introduction into commerce of a product like a bioengineered tomato is free and clear, for instance. It is exempted.

Fourth, any rule or agency action relating to the public debt—that is, selling a Government bond—is exempted, and should be. I agree with these.

Fifth, any rule required to be promulgated at least annually pursuant to statute. For instance, duck hunting rules. I favor this. We exempted duck hunting rules that have to be put out by Federal mandate each year. Duck hunting rules are exempt from this bill. But serious health and safety protections are not.

Sixth, any rule that approves corporate mergers and acquisitions. Wall Street gets an exemption. But the average American's protection from bad meat and bad water does not get an exemption. It does not get that same kind of exemption.

Seventh, any rule relating to the safety and soundness of banks and lending institutions is exempted.

Eighth, any rule by the FERC [Federal Energy Regulatory Commission] that reduces regulatory burdens is exempted. Electric utilities, for instance, get an exemption. For protection from bad meat and bad water, we could not even get that same kind of exemption.

Mr. President, I do not object to the above exemptions. I favor those exemptions. But I say along with it, do we not want to hit some balance and say that the health and safety of our families, of our children, our fathers and mothers, deserves similar protections?

The health and safety concerns addressed in the E. coli and the cryptosporidium votes yesterday are not imagined. Those dangers are not dreamed up dangers or mere possibilities. Quite the opposite. E. coli and similar foodborne illnesses kill some 3,000 to 7,000 people every year in this country. A couple of years ago in Milwaukee, cryptosporidium in the water supply made over 400,000 people seriously ill and 100 of them died.

So these are not imagined dangers, they are real dangers. We know the danger from them. They are not fictitious thoughts that need more and more and more review to determine if there is a danger. Nothing should be permitted to hold up the corrective regulations as could happen under S. 343.

I wish to protect the exemptions listed above. I think they are correct, and I am glad they are in there. Yes, we want to protect those, of course. But I would note that with the exception of duck hunting and the Federal Energy Regulatory Commission, the other six exemptions deal with economic matters.

Now, that, too, is fine as far as I am concerned, but I also firmly believe that we should show the same concerns for known health and safety matters with all of our people.

Mr. ROTH. Will the Senator yield for a question?

Mr. GLENN. Just a moment until I finish my statement here.

Now, it was also brought up that our side of the aisle, apparently it is being talked about that we are delaying things somewhat. It was said that the administration is sending up red herrings. Last night, the distinguished majority whip, I believe, termed them nit-picking on our side.

Yesterday, since we started debate on this bill, we have had 16 amendments put out, 11 by Republicans; 6 of those were withdrawn; we had five votes on Democratic matters here and these were on such things as E. coli, killing 500 people a year; cryptosporidium, from which 100 people died—foodborne diseases kill 3,000 to 7,000 people annually—votes on Abraham and Nunn on small business matters; Senator DOLE put forward an E. coli amendment himself; Johnston-Levin combined to deal with supermandate problems.

So I do not see that these are nitpicking, and these are not red herrings. These are very substantive amendments, most of them dealing with the health and safety of the people of this country.

What the Senator from California is talking about is something that is very important—mammography, the standards for it, and surely having that exempted so that they would not have rules delayed for several years, or the potential for the new and improved rules, they hope, to be delayed for several years, while S. 343, if passed, would force them to go back into a reanalysis that could take a lengthy period of time, as I indicated, from what happens under just one regulation and all the voluminous paperwork which is part of that process.

I do not see these things as being nitpicking as they were referred to last night, nor do I see them as a red herring now.

So I would like to point out once more before I yield the floor here that the second-degree amendment by the distinguished majority leader is a sense-of-the Senate and nothing more. It is not binding in law. And that is what the Senator from California is talking about. I do not disagree. I do not know whether I would vote for this sense-of-the Senate or not. I presume that I would. But it still does not have standing in law. And so it means nothing except it is filling up the tree and trying to delay things further, I guess. Delay on this one certainly is not coming from our side of the aisle.

I yield the floor.

Mr. JOHNSTON. Mr. President, will the Senator yield for a question?

Mr. ROTH. Will the Senator yield for a question?

Mr. GLENN. I suggest the absence of a quorum temporarily.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. JOHNSTON. Mr. President, I was going to ask the Senator from Ohio and perhaps the Senator from Delaware to tell me about the status of the rulemaking under mammography. What I wish to know is if the information I have is correct, which is that there is an interim final rule which has been published and is in effect on mammography. Is that correct? I ask the Senator from Delaware, does he know that, or the Senator from Utah?

Mr. HATCH. Yes, that is correct.

Mr. JOHNSTON. It is. And it has the effect of an interim final rule?

Mr. HATCH. That is correct.

Mr. JOHNSTON. And as I understand it, in October there will be a proposed rule to be published by the FDA. Some say it is not on the President's schedule; some say it is on the President's schedule. Does the Senator from Utah know?

Mr. HATCH. We have been told that that is the case, that there will be a proposal in October. However, it was not listed in the May 5 Federal Register which outlined the administration's regulatory program for the year. But we now have been told by the FDA that it is proposed for October.

Mr. JOHNSTON. There is in fact some doubt as to whether that will be——

Mr. HATCH. I do not think there is much doubt. I think it will happen, but I cannot guarantee it.

Mr. JOHNSTON. But it is a proposed rule to be published in October, by some statements?

Mr. HATCH. That is right.

Mr. JOHNSTON. There may or may not be doubt about whether they will actually go to the proposed rule, but they might as of October go to a proposed rule.

Mr. HATCH. That is right.

Mr. JOHNSTON. Now, that proposed rule——

Mr. HATCH. The odds are they will.

Mr. JOHNSTON. That proposed rule is not an effective rule; it is, in effect, a proposal for rulemaking which will require the full rulemaking process. Is that not correct?

Mr. HATCH. That is correct.

Mr. JOHNSTON. Now, I also understand that their analysis shows that it has a $97 million impact, and under the President's Executive order, which calls for risk analysis, which has a $100 million cutoff, that would not qualify under the President's order as a major rule?

Mr. HATCH. That is correct.

Mr. JOHNSTON. They are, however, as I understand it, treating this as a major rule. Is that correct?

Mr. HATCH. We are told that, but we do not know that. That is the rumor.

Mr. JOHNSTON. I understand that they are treating it as a major rule, that they are proceeding with a risk assessment and with a cost-benefit analysis as though it were a major rule.

Mr. HATCH. That is our understanding.

Mr. JOHNSTON. Now, I also understand that under the President's Executive order, this risk analysis which they are getting ready to perform and the cost-benefit analysis which they are getting ready to perform—first of all, has that been done, the risk assessment and cost-benefit analysis? Has it been done or is it a plan to do?

Mr. HATCH. We do not know whether it has been done. Certainly they should plan to do it.

Mr. GLENN. Mr. President, I was going to put in a quorum call because the distinguished Senator from California had to unavoidably be absent for a few minutes, and she asked I put in a quorum call. I did not know whether this was going to go on very long or not. I would like to wait until she comes back. She will return within 10 minutes, I understand. And I hate for all the discussion going on on her amendment without her being in the Chamber. She asked me to put in a quorum call for just a few minutes, and I will do that and delay things for just a few minutes. So I suggest the absence of a quorum.

Mr. ROTH. Will the Senator withhold that request? I had a question or two I would like to ask him.

Mr. GLENN. This is all on the same subject, though.

Mr. ROTH. Regarding the statement the Senator just made, a question referring to that.

Mr. GLENN. It is all on the same subject. I would rather wait until she gets back. I let this go a while in spite of her request. It is going to go on here for quite a while apparently, so I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ROTH. I ask unanimous consent that the order for the quorum call be rescinded

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROTH. Mr. President, I would like to raise two or three questions with my distinguished colleague, the Senator from Ohio. I would like to point out that the legislation of the distinguished Senator from Ohio, S. 1001, of course, contains cost-benefit analysis, the same as does the bill before us. But in contrast to the legislation that we are considering which has an exception to the cost-benefit analysis, I wonder if the distinguished Senator from Ohio could tell me where S. 1001 contains any exception from the cost-benefit analysis where it is impracticable because of an emergency or health or safety threat?

Mr. GLENN. I would reply to my friend from Delaware that I think the major difference that protects the health and safety of the people in this country is that all the rules that are under S. 1001, all the rules in the pipeline stay in effect. We would not knock any of them out. We did not send them back and make them go through another long and lengthy process during which time the people would not have the same protection. And also we have no petition process in S. 1001. These things can be bogged down.

Mr. ROTH. I would point out to the distinguished Senator, what we are talking about is a future rule. And if we are not in the immediate case, there are going to be other situations where there are going to be serious threats to health or safety. My question to you is, where is the exception in your legislation where it is impracticable to be making a cost-benefit analysis?

Mr. GLENN. I am not sure in the future it is any different from this bill at all, as far as in the future. What we are talking about are all these things like E. coli, and cryptosporidium that there could have been a challenge made to them in this interim period after the April 1 cutoff.

Mr. ROTH. Let me point out that in S. 343, it specifically provides that ''A major rule may be adopted, may become effective without prior compliance with this subchapter if, A, the agency for good cause finds that conducting cost-benefit analysis is impracticable due to an emergency or health or safety threat that is likely to result in significant harm to the public or natural resources.''

My question to you is, where is there that kind of exception, that kind of waiver in 1001?

Mr. GLENN. Well, let me tell you about E. coli in particular as it applies here. The agency has told us the rule that includes E. coli protection is a general one and cannot legitimately be considered an emergency rule. Accordingly, the emergency provisions of S. 343 do not apply to the regulation in the pipeline concerning E. coli. And the Dole amendment on E. coli does not prevent the USDA proposed regulation on meat and poultry inspections from being sent back to square one again for cost-benefit analysis and risk assessment.

Mr. ROTH. Again, as far as E. coli is concerned, that specifically is covered in our legislation. But again I would like to know the line and page in S. 1001 where there is an exception to the cost-benefit analysis along the same lines contained in S. 343.

Mr. GLENN. I cannot give the line and the page right now. But I will look it up here. We will try to get an answer very shortly.

Mr. HATCH. Will the Senator yield?

Mr. ROTH. Yes.

Mr. HATCH. The fact of the matter is that if there is no emergency, then why not do a cost-benefit analysis?

If there is an emergency, there is nothing in Senator GLENN's bill that takes care of it.

But there is in our bill which is now under consideration on the floor. Under section 622(f) and section 632(c)(1)(A), cost-benefit analysis and risk assessments are not required if ''impracticable due to an emergency or health or safety threat that is likely to result in significant harm to the public or natural resources.''

There are no exemptions in the Glenn bill at all for cost-benefit analysis where there is an emergency.

I did not mean to interrupt you, but I wanted to point that out.

Mr. ROTH. I think it is important to understand that, in a case of health or safety threat. It does not have to be an emergency. The legislation provides that an exception can be made in the case of an emergency or health or safety. So there are three different exceptions. So there does not——

Mr. GLENN. I would point out——

Mr. ROTH. Or a threat.

Mr. GLENN. I would point out to my friend from Delaware the exception for that would only be for 180 days. Then it has to go through all the reanalysis and may be held up for years.

Mr. ROTH. That is totally inaccurate. There is nothing in the legislation that says the rule terminates.

Mr. GLENN. But it is judicially challengeable. And there is nothing in there that says it is not challengeable.

Mr. HATCH. We just accepted an amendment this morning to make 1 year.

Mr. GLENN. One year. I am corrected on that. The original language was 180 days in the legislation. And the Senator from Louisiana changed that to 1 year. And that is correct. That has been changed.

Mr. ROTH. I reemphasize a point I made earlier that it can only be challenged in court to have the analysis made. It does not result in the rule itself being terminated. As a matter of fact, this section starts out that a major rule ''may be adopted and may become effective without prior compliance with the subchapter.''

But a second question I would like to ask the distinguished Senator from Ohio is, he spoke about E. coli and of food poisoning and a number of others. And yet I do not find any of those matters to be listed in the Democratic list of concerns with S. 343. There were presumably 9 major problems with the legislation plus another 17 minor problems. But I do not recall seeing any of these issues being included as part of the problems with the 777 version of the Dole-Johnston substitute.

I have in my hand the document given to us by the Democrats as areas of concern with the legislation before us. At 9:30 this morning, we were supposed to have a discussion of these provisions or concerns. That was not held. But nowhere—but nowhere—do I see the issues raised in this paper that the distinguished Senator raised this afternoon.

Mr. GLENN. Obviously, we missed one. We have one more to add. Put it on. Fine.

Mrs. BOXER addressed the Chair.

Mr. GLENN. I am serious about that. One comment and then I will yield.

Mr. ROTH. I yield to——

Mr. HATCH. May I ask one question?

Mr. ROTH. May I ask who has the floor?

The PRESIDING OFFICER. The Senator from Delaware.

Mr. HATCH. If I may ask one question of my colleague?

Mr. ROTH. I am happy to yield for a question without losing my right to the floor.

Mr. HATCH. If I may ask one question, whether it is 1 year, 180 days or 1 minute, is it not true that the rule will not terminate?

Mr. ROTH. Absolutely. That is exactly the point I have been making.

Mr. HATCH. The rule continues to remain in effect.

Mr. ROTH. Absolutely. There is nothing in the legislation that terminates the rule.

Mr. HATCH. That is true on the rule on mammography, is it not?

Mr. ROTH. Absolutely.

Mr. HATCH. So, what are we arguing about?

One reason we filed this perfecting amendment is because there is no need for this amendment from the distinguished Senator from California, because the bill addresses the issue. There is an interim rule. The fact they do not have a final rule is the fault of the administration and the FDA.

I will say that the amendment of the Senator from California will bring

about a beneficial but unintended effect, because I am quite certain the FDA is going to work hard to get their rule done by October. So that will be a good effect of this amendment, in my opinion, but I still believe there is no reason to keep making these special exemptions for anything. Is that not true?

Mr. ROTH. That is absolutely correct.

Mr. GLENN. No, that is not——

Mr. ROTH. Let me——

Mr. JOHNSTON. Mr. President, will the Senator yield for a question or series of questions, or does he want to finish his statement?

Mr. ROTH. I would rather continue just for the moment. I will be happy to yield in just a few minutes. I think it is extremely important to understand that in the Dole-Johnston legislation, on page 25, we have a specific exception to cover the case of emergency health and safety from the general rule of requiring a cost-benefit analysis.

Again, I find no such exception in S. 1001. As a matter of fact, I look on page 5 of S. 1001 and it says that:

> The term ''rule'' shall not include—
>
> (A) a rule of particular applicability that approves or prescribes for the future rates, wages, prices—

So forth and so forth.

> (B) a rule relating to monetary policy proposed or promulgated by the Board of Governors of the Federal Reserve System or by the Federal Open Market Committee;
>
> (C) a rule relating to the safety or soundness of a federally insured depository.

It goes on with various housing, foreign banks, so forth.

> (D) a rule issued by the Federal Election Commission or a rule issued by the Federal Communications Commission pursuant to section 203 of the Communications Act of 1934.

Those are the exceptions to the rule, in contrast to our legislation where we specifically provide a generic waiver.

Nor do I find anywhere, and I again ask the distinguished Senator from Ohio, where there is any kind of exception in the case of E. coli or breast cancer in the legislation proposed by him.

Mr. GLENN. I reply to my friend from Delaware, in our legislation, S. 1001, rules in the pipeline are permitted to go ahead and be in effect, where under S. 343, they would have to go back and would have 1 year to comply. If they did not comply, then I do not see anything in here at all that says it could not be judicially challenged, which it could.

Mr. ROTH. What about next year under your legislation?

Mr. GLENN. You cannot guarantee getting these things through. Ours leaves things in the pipeline, and we have no petition process. The rules in the pipeline would stay in effect. That is what we are talking about.

Mr. ROTH. The question I am raising, if you have a situation arise where it is an emergency, a safety threat or a health threat in the future and it is impractical to make a cost-benefit analysis, where is the exception in your legislation?

Mr. GLENN. In the future—if we are talking about in the future, I think both pieces of legislation are pretty much identical to what happens in the future. We are talking about the interim period.

Mr. ROTH. That is the point I am making. Our legislation, S. 343, on page 25 has a specific exception to cover these situations. There is no such exception, no such waiver in S. 1001. If I am wrong, I ask for the page and line number.

Mr. GLENN. I think the difference on this, I reply to my friend, is that you have so many more decisional criteria that have to be complied with in this and all complied with within a year, which is not likely, in most cases, to be completed within a year.

Mr. ROTH. But I think the complaint, I will say, is the time that would take in making the cost-benefit analysis.

Let me ask you this. Does your legislation exempt E. coli? Does it have any exemption covering E. coli?

Mr. GLENN. It would not have to because in the pipeline that is covered, and we have no cutoff threshold that would knock it out of the pipeline, we let things in the pipeline stay in there. So E. coli—incidentally, while we are on the subject of E. coli, here is out of Tennessee right now, July 4, five cases of E. coli being treated. One woman, I think one child has already died, I believe it is. These are the press reports I was just handed a few moments ago, multiple newspaper reports about an E. coli outbreak in Tennessee right now. So these were not theoretical things we were talking about on the floor yesterday.

Mr. ROTH. The point I would like to make is, yes, there are going to be serious health, safety and other problems. But the important difference between the legislation before this committee and the amendment being proposed by the distinguished Senator from Ohio is that there is a waiver that anticipates what might happen in the future. That is a critically important difference.

Today it may be E. coli, tomorrow it may be heart disease, a third day it may be something else. But under our legislation, we have anticipated that situation by having a generic exception that covers those situations. That is the reason it is not necessary to spell out each of these exceptions as being proposed, except for public relations reasons.

Mr. GLENN. Let me ask this, then. Does the Senator from Delaware believe that rules in the pipeline now that deal with health and safety should be permitted to remain in effect without having to go through a whole new series of hoops?

Mr. ROTH. Well, we voted yesterday April 1 to make those effective under the Johnston amendment.

Mr. GLENN. I am talking about things in the pipeline that are not to be completed until after April 1. That is the whole area of contention right now—E. coli, cryptosporidium, and all the rest.

Mr. ROTH. Here the exception applies. That is the purpose of this exception. It applies to those that are in the pipeline.

Mrs. BOXER. I have a parliamentary inquiry.

Mr. ROTH. It applies in the future.

Mrs. BOXER. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Delaware has the floor.

Mrs. BOXER. I have a parliamentary inquiry.

The PRESIDING OFFICER. Does the Senator from Delaware yield?

Mr. ROTH. No, the Senator does not yield.

The PRESIDING OFFICER. The Senator has the floor.

Mr. ROTH. Mr. President, I think it is critically important to understand that the argument made by the proponents of the pending amendment is that a future anticipated regulation on mammograms would be delayed by compliance with S. 343, and that during such delays, lives would be lost.

In order to address such issues, the majority leader last Tuesday offered an amendment, which was adopted by the Senate, that provides that in exactly those circumstances described by proponents, the relevant agency may issue the rule first and allow it to take effect and, thereafter, finish compliance with S. 343.

Through the Johnston amendment, adopted today, the agency would have 1 year to finish its compliance. The language of that amendment says that a rule, such as the mammogram rule, ''may become effective without prior compliance''—Let me read that again: ''may become effective without prior compliance if the agency, for good cause, finds that conducting cost-benefit analysis is impractical due to a health threat that is likely to result in significant harm to the public.''

Mr. GLENN. Will the Senator yield for a question?

Mr. ROTH. Yes, I will be happy to yield for a question.

Mr. GLENN. But in that case, the rule would still have to go back and go through the new requirements of S. 343 on being reanalyzed, and a new rule as an improvement would not be able to go into effect until that had been completed, which may be several years later.

Mr. ROTH. No, no, that is not correct. Again, I will reread what I read twice. It says, ''may become effective without prior compliance * * *'' That is critically important.

What we are trying to anticipate in the language on page 25 of S. 343 is making certain that where a situation arises because of cancer, because of heart disease, or whatever it may be, the rule can become effective without making the cost-benefit analysis if the agency finds that conducting such analysis is impractical due to a health

threat. Our language is generic. It anticipates that there may be many different situations. That is the reason we do not want to get into spelling out exception by exception.

Mr. GLENN. Might I ask a question?

Mr. ROTH. Yes.

Mr. GLENN. I ask this question with specific reference to the mammography proposal. Would it be the opinion of the Senator from Delaware that the mammography proposal and the proposal that will be made in October, and on which a lot of work has already been done, those should be permitted to go through and be in full effect without having to go back and comply with a lot of new rules and regulations, as required in S. 343? In other words, it could go into effect and stay in effect.

Mr. ROTH. The agency has that authority under our legislation, that is correct.

Mr. GLENN. Without any challenge, without having to go back and go through the requirements of S. 343, is that correct?

Mr. ROTH. Basically, that is correct. They are expected to go ahead and make a cost-benefit analysis the year following. They are required to make it. But that, again, in no way terminates the rule. The rule continues so people are protected. That is what the whole point of the exception is.

Mr. GLENN. A point I made a while ago on what is involved in a regulation is that the likelihood of this being completed in a year is probably not very good. It is probably pretty remote. Most rules take several years to finalize. What happens at the end of that 1-year period? It would be judicially challengeable and could be knocked out. That is the uncertainty we do not want to leave people with. That is the construction of the argument right there.

Mr. ROTH. An individual can go into court and ask that the analysis be made. But that will, in no way, terminate the rule.

So the important fact is that we are protecting the American people, the American public. And where there is a health problem, an imminent threat, or whatever, an exception to the rule is allowed. So what we have done in S. 343, in contrast to S. 1001, has anticipated this need.

So, again, the distinguished Senator from Ohio made many complaints that, as I said, seem curious to me. He complains that the emergency is exempted and S. 343 is insufficient. Yet, his bill, S. 1001, has no exemption at all. The question is, why? Is it not needed? Again, he complains that S. 343 has no individual listing on the E. coli or mammography rule. Yet, his bill, S. 1001, has no exemption at all. Why? It is not needed.

Mr. GLENN. Are you asking me a question?

Mr. ROTH. No.

Mr. GLENN. Everything that is in the pipeline stays there. It does not have to go back for reanalysis. That is the reason.

Mrs. MURRAY. Will the Senator from Delaware yield for a question, Mr. President?

Mr. ROTH. My question is—

Mrs. MURRAY. Mr. President, will the Senator from Delaware yield for a question?

Mr. ROTH. In just a moment. Again, I want to point out that, in the future, a situation can arise under S. 1001 where there is a threat to health or safety, or an emergency and, yet, there is no exception, no waiver permitted under S. 1001. The important point, of course, is that this situation has been addressed in S. 343.

Mr. HATCH. Will the Senator yield for another question?

Mr. ROTH. I am happy to yield.

Mr. HATCH. Excuse me. We want to make sure this is understood. Is it true that this interim rule was issued in December of 1993 on mammography?

Mr. ROTH. Yes, that is true.

Mr. HATCH. Is it not also true that it was in the pipeline before April 1 of this year?

Mr. ROTH. Yes.

Mr. HATCH. Which is the date in this bill, and we protect rules in the pipeline, also, do we not?

Mr. ROTH. That is true.

Mr. HATCH. I think what the Senator is trying to explain here is that the Glenn bill has no protection, no exception at all for E. coli, mammography, or any of these other items. And we do. We provide that if there is even a threat, they do not have to do cost-benefit analysis or risk assessment.

Mr. ROTH. That is correct.

Mr. HATCH. If there is a threat, we do not have to do cost-benefit analysis or risk assessment.

Mr. ROTH. That is correct.

Mr. GLENN. No, it is not.

Mr. HATCH. Yes, it is.

Mr. GLENN. What the Senator says is not correct, no matter what you say. Our bill has the Administrative Procedure Act to go along with——

The PRESIDING OFFICER. The Senator from Delaware has the floor.

Mr. GLENN. Will the Senator yield for my statement?

Mr. ROTH. Without losing my right to the floor.

Mr. GLENN. The Administrative Procedure Act says that when the agency, for good cause, finds and incorporates the finding and a brief statement of reasons therefore——

The PRESIDING OFFICER. The Senator can only yield for a question. Does the Senator from Delaware yield for that purpose?

Mr. GLENN. Well, I will ask a question. Would the Senator agree with the Administrative Procedure Act, that it covers our bill, in that when it says, ''When the agency for good cause finds and incorporates the finding and a brief statement of reasons there in the rules issued, that notice and public procedure thereon are impracticable and unnecessary and contrary to the public interest,'' it would also mean that the agency could control what is an emergency and not? In your bill, it goes back for a year's reanalysis. It is required.

Mr. ROTH. I point out that the Senator is making my argument. That legislation applies, obviously, to S. 343. So what you are, in effect, saying is that none of these exceptions that have been discussed in the last 3 days are necessary because they are already covered by the Administrative Procedure Act.

Mr. GLENN. Well——

Mr. ROTH. That is the main point I have been trying to make, that these specific exceptions are not necessary. If you want to put it on the basis of the basic rule, fine. But I will also point out that, in our specific legislation, we have waivers both with respect to cost-benefit and with respect to risk assessment. So that is the reason we do not think any of these special cases are necessary.

Mr. GLENN. Would the Senator agree, then, that we should change S. 343 to just say that rules in the pipeline stay in effect?

Mr. ROTH. Mr. President, I would not.

Mr. GLENN. That means they have to go back through a whole new procedure that will delay them for years and years.

Mr. ROTH. The Administrative Procedure Act exception, as I said, applies to S. 343 equally. But we do have a better exception. The APA exception only applies to notice and comment for the rule. The exception in S. 343 applies to cost-benefit analysis, and that is what is critically important.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Thank you, Mr. President. I ask unanimous consent to have printed in the RECORD a clip regarding E. coli that has been occurring in Tennessee in the last few days.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the News Sentinel, June 30, 1995]

BACTERIA STUDIED IN ILLNESS OF BOY, 11

(By Ken Garland)

MARYVILLE.—State health officials hope to know by this afternoon if an 11-year-old Maryville boy—hospitalized since Sunday—is suffering from a severe form of sometimes-fatal E. coli bacteria.

Logan Duckett, son of John and Debbie Duckett, was in fair condition Thursday and is expected to suffer no lasting effects from the illness, said Dr. Charles Raper, his doctor.

The boy was hospitalized after suffering since June 22 with diarrhea, Raper said. Preliminary test results by the hospital laboratory indicated he might be suffering from 0157:H7, the name for the severe form of E. coli.

The state health department is conducting laboratory tests. ''We're waiting on confirmation,'' said Dr. Paul Irwin, East Tennessee director of the Tennessee Department of Public Health. ''We know it's E. coli; we just don't know if it is 0157:H7.''

E. coli is a bacteria found in meat that has been tainted, usually with feces, Raper said. Proper cooking of the meat will kill the bacteria, officials said.

Mrs. BOXER. Mr. President, I am very pleased to get the floor more than an hour after I introduced a very important amendment. There is a lot of talk about the bill in general. I guess it is time to give a little bit of a wake-up call to some of my colleagues.

This second-degree amendment which would act as a substitute for the Boxer-Murray-Mikulski amendment is the most cynical parliamentary attempt to gut an amendment that I have ever seen.

I have only been here a few years. I have seen a lot of second degrees from both sides. Usually when you second-degree an amendment, it has something to do with the underlying amendment. The underlying amendment that I have put forward would say that the rules regarding mammography shall move forward and they will not be encumbered by this bill.

We have heard three learned Senators squabbling over there for 60 minutes. No one understands anybody else. Ask what is on page 9, page 4, line 1—if these three cannot agree, and they are friends—imagine the field day the lawyers will have.

Should we move this mammography rule forward? Is it stuck? Is it stopped? I want to say I do not want to play Russian roulette with the women of this country.

When I laid down my amendment, it was very clear. I am really glad we can talk about it. It basically said it was very important to keep this rule moving. It is interesting that my friend from Utah complains it has taken so long.

On the one hand, he says there is too much regulation and the bureaucrats cannot wait to regulate; on the other hand, he complains that this regulation is taking too long. We cannot have it both ways. Better they are careful with this rule.

I will go into what this rule does. It is complicated. The fact is, we should not derail it now; 46,000 women every year die of breast cancer, and many of them, tragically, die because the mammogram they took was inaccurate or the technician was not highly trained, or the equipment was not good, it was slipshod.

Then I am told that I am offering a special-interest amendment. I take great offense. What is the special interest? The women of America? Give me a break. The women of America want this amendment.

I have a letter on all Members' desks, supporting this amendment, from the National Breast Cancer Coalition. Is that a special interest? If women who have had breast cancer, who have had loved ones have breast cancer, survivors, if that is a special interest, I do not know what is going on around here.

I will name the special interests—the people who do not want to be regulated, who do not want to upgrade their mammography equipment, who want to get away with hiring people to work for them who are not as well trained and maybe come at a cheaper price. We should talk the truth around here for a change.

Mrs. MURRAY. Mr. President, will the Senator yield?

Mrs. BOXER. I am happy to yield to the Senator.

Mrs. MURRAY. Mr. President, I ask my colleague from California, her amendment specifically exempts the Mammography Quality Standards Act regulation from the underlying bill, is that correct?

Mrs. BOXER. That is correct.

Mrs. MURRAY. The second-degree amendment placed on the desk by Senator DOLE is simply a sense of the Senate, is that correct?

Mrs. BOXER. That is correct. It is a sense of the Senate that does not even deal with this subject matter. It just says that nothing in this bill will harm anybody.

Mrs. MURRAY. If the Senator from California will let me ask another question, certainly she sat with me throughout the budget debate and listened to our colleagues say sense-of-the-Senate resolutions are not binding, and I assume she feels as I do, and I will ask the Senator, will the Senator be able to go back to her friends diagnosed with breast cancer or to women in her State and say, ''Don't worry, we have taken care of you with a sense of the Senate that is not binding?''

Mrs. BOXER. I say that any Senator who went to someone who was worried about breast cancer and said the sense of the Senate was going to do one thing to move forward the rule on mammography would simply not be telling the truth.

Of course, the Senator is correct. We cannot tell anybody who cared about this issue that the Dole substitute does a thing to help move the mammography rule along.

Mrs. MURRAY. I thank my colleague.

Mrs. BOXER. Thank you.

I had the feeling that my Republican colleagues would offer a second-degree amendment like this because they have done it before on other amendments.

They did not tell me they were going to do this, but they wanted a time agreement, and I said absolutely. I would give 15 minutes on my side, 15 on their side if there were no second-degree amendments. They said, ''Gee, we have not seen your amendment, Senator, how can I do that?''

I gave my amendment, and miraculously in 30 seconds the majority leader appeared with this sense-of-the-Senate substitute. That was fast work. But it will not work. It will not work. I am telling my friends that 46,000 women die of breast cancer every year, so I will stand on my feet for 46,000 minutes or 46,000 hours or whatever it takes, and I know my friend from Washington is in complete agreement so there are two of us, at least.

And by the way, there are a lot more on this amendment and I will mention who they are.

Mr. KENNEDY. Mr. President, will the Senator yield?

Mrs. BOXER. I am happy to yield to the Senator.

Mr. KENNEDY. The Senator has in a very important way changed this debate from just the questions of regulations of rules into real terms.

What we are talking about as the Senator from California and the Senator from Washington, we are talking about mothers, we are talking about sisters, women in our society for whom the incidence for cancer has grown significantly over the period of recent years with regard to breast cancer.

Does the Senator realize that when the Senate, in the last Congress went on record, it was a unanimous vote, unanimous out of our committee to develop these regulations, unanimous in the U.S. Senate to move ahead, unanimous in the House of Representatives in their committee, and unanimous on the floor to develop the regulations? The need is out there.

Can the Senator possibly explain to any Member why, when it was the result of careful consideration both in terms of the committees and the debate here, the recommendations that were made by the testimony that was given overwhelmingly favorable with a sense of urgency in asking not to delay and to move ahead, and now we have the final regulations just being brought up, that we are asked to follow through some other procedure, some other procedure, some other words, which we find out the meaning of which is still very much left in doubt?

I do not know whether the Senator from California was here when we debated the Civil Rights Act, when we spent months here trying to debate the difference between significant and manifest.

Here we have a change in the food standards into insignificant risk without definition. We will come back to that later during the course of the debate on food standards and food safety.

Can the Senator explain to the American people why, if there was such a sense of urgency that Republicans and Democrats, all Americans, are getting behind and say get about the business of doing it? Does it make any sense to the Senator?

Mrs. BOXER. I say to my friend, who is such a leader in all health issues, including this breast cancer issue—it makes no sense to me. And that is why I committed myself, and I know my colleagues have as well, and I am so appreciative the Senator was able to get to the floor at this time, to focus on this issue.

Mr. KENNEDY. Just finally, is the Senator concerned, as I would be, that there may be manufacturers who are out there, who are producing equipment today, that do not meet the standards, and that would be put in a position to question the standards in the future because their equipment does not meet those standards, and they would be able to delay the implementation of those standards? Or there may be groups out there that are going

to question and challenge it because they do not have the training and they do not want to comply with the various things. We have heard that, as a reality. We have heard of manufacturers. We have heard of corporate interests that want to resist these kinds of standards.

But what we are faced with is why should we side with those interests when we have something which is of such importance to women, not just to women in our society, to mothers in our society, to sisters, to wives, to members of our families—that is so important.

Why should we desist and give in to these special interests, which are the special interests which are the manufacturers that will be able to tie this up, even under the existing standard, with the look-back provisions, and all the other kinds of mechanisms which have been reviewed? I would like to stay away from those. We can get into those in debate, because there are those here in the Senate who would like to just tie us up and talk about procedure when the Senator is talking about the impact on real people. Why should we side with those companies or manufacturers who will delay this rather than with the sound health policy that would implement it?

Mrs. BOXER. Let me say to my friend, he is so right, because he worked so hard on getting the bill through and getting the law passed in 1992. Now the rule is coming to fruition in October. We are going to have the rule.

If the Senator would have been here, I say to my friend from Massachusetts, three friends from the opposite side of the aisle could not even agree on how this new legislation is going to work. What we are saying is, do not put at risk the women of America for this battle over words. The Senator is so right. We get down to this battle over words and lines on pieces of paper. I am just so pleased the Senator from Massachusetts came here because, after all, why do we have rules? Because we pass legislation.

And the Senator reminds me—which I frankly did not remember—that Republicans and Democrats voted unanimously for the legislation that is leading to this rule that is coming forward in October. Why on Earth we are going to get into a delaying tactic here, I do not know.

I say further to my friend, I am worried even about this debate, that people listening to this debate, business people, may think we are losing our will to move forward with safer standards. It is not just the Senator from California, or Massachusetts, or Washington, who are fearful of this. We have the agencies telling us very clearly that if this bill passes without amendment, this rule will be derailed. If we are going to make a mistake—and our colleagues assure us they are wrong—I do not want to make a mistake in this subject area. Frankly, there are other areas I would not get so upset.

What I find very interesting is the Senator from Utah said we cannot take this anymore. It will be 3 months. It will be exemption after exemption after exemption from this bill.

The bill has a ton of exemptions for business. But when the Democrats offer exemptions for E. coli—which we just heard there is another problem in Tennessee in the last few days on that; and we offer an amendment on cryptosporidium, and today on mammography—oh, we are trying to slow it down. We are standing here for the special interests.

God, I hope the American people are watching this.

The majority leader's sense of the Senate has no force of law. We have already stated that. It has nothing to do with the underlying bill on mammography. It is a general statement which we all can agree with. In nothing that we ever do, do we intend to hurt the fight against disease. But yet, the underlying Boxer amendment, which we are going to get a vote on—because, unlike my Republican friends, I am going to clearly state what I intend to do, so I hope they are listening. I intend to get a vote on the underlying amendment, period. You can second-degree me all night and all day tomorrow and the day after and the day after and the day after and the day after—we will have a vote on the underlying amendment.

So I hope sooner rather than later we can come to that agreement. We did come to that agreement on the E. coli amendment, where the Senator from Louisiana had his second-degree voted on separately and then the underlying amendment came after. Sad to say, we got 49 votes.

Everything you could think of is in the second-degree amendment, in the substitute, except that you should not beat your wife. That was not in there. But nothing specifically to do with exempting the mammography rule.

Let me tell my colleagues what they are stopping here, if we do not get to the underlying Boxer amendment: Specifying performance standards for x-ray equipment. I would say that is rather important, because if you get a mammogram and the x-ray equipment does not meet the standard, or a high enough standard, they can miss the cancer.

I had a friend who had her mammogram; they told her it was fine, but thank God she found the lump herself and we hope she will make it. They missed it. How am I going to tell her that, oh, I just decided for convenience I would not press my amendment and we are going to vote for some sense of the Senate? I cannot.

(Mr. GREGG assumed the chair.)

Mr. KENNEDY. Will the Senator yield on that point?

Mrs. BOXER. Yes, I will.

Mr. KENNEDY. I do not know if the Senator is familiar with the 1992 study by the Physician Insurers Association of America that found that 35 percent of all claimants with breast cancer had a negative mammogram and 14 percent had equivocal mammogram results.

This is prior to the time when we took action to pass this legislation, the rules of which are about to go into effect to protect American women.

Mrs. BOXER. So is my friend saying that half of the mammograms may not have been fully accurate?

Mr. KENNEDY. Mr. President, 35 percent false negative; 14 percent were equivocal—in the 1992 study, which is the most comprehensive study. As compared to the mammography, the most recent studies now, according to the GAO report, find that high-quality mammography can find 85 to 90 percent of breast tumors in women over 50, and discover a tumor up to 2 years before a lump can be felt.

That is in 85 to 90 percent, with the high-quality mammography, with well-trained people, versus the recent study, the 1992 study, that showed 35 percent false negatives with another 14 percent that were equivocal. This is what we are talking about: Real life and death.

I think that the Senator would agree with me that we are not saying that these mammogram standards will solve all of the problems and that all breast cancer is going to be resolved. We are not going to be able say that all of the people who should have those tests and who should receive them will receive them. But it is a beginning.

Final point this: We heard so much that one of the first orders of business by our colleagues on the other side of the aisle was medical malpractice reform. You can do more about medical malpractice reform by implementing these mammogram standards because you are going to get accuracy and you are going to save lives and not have the resulting kinds of challenges that come out.

So I think the point that the Senator was talking about, a friend that experienced these tragic or unfortunate kinds of results, is illustrated by all of the testimony that we had, which, as the Senator from Washington and the Senator from California and others have pointed out, is the reason we got the unanimous results.

So it is important, I think, to understand what is before the U.S. Senate; that is, whether we are going to go forward with a procedure—could we have order, Mr. President?

The PRESIDING OFFICER. Would the Senators please take their conversations to the Cloakroom?

The Senator from Massachusetts?

Mr. KENNEDY. I thank the Chair.

The Senator from California has the floor, but I think the Senator from California and the Senator from Washington will agree that we are talking about a process and a procedure that will be able to really have an impact and save real people's lives. We know that will be the result based on the information that we have, and that under

this legislation we are putting them at risk.

There will be those though say, ''Well, we have a new kind of way, a new process and procedure. We do not know how it will be interpreted. But why don't you take your chance and roll the dice?'' Would the Senator be willing to do that with her daughter? I certainly am not prepared to do it with mine. And I do not think any American family would be prepared to do it with their wife, daughter, or their mother. Why should we ask the American people to go ahead and take that chance and not address that issue during the course of this debate?

Mrs. BOXER. I want to say to my friend from Massachusetts—and I thank him for bringing those statistics to our attention—that 35 percent of the women are told they are OK, there is nothing wrong, when in fact there was a lump present. The Senator is so right to come to this Chamber to talk about his daughter and to talk about my daughter. One of the things I said is that the first time a Senator's wife has a problem, they will be on this floor saying, ''Oh, let us pass the Boxer amendment.'' You know it hits home.

Mrs. MURRAY. Will the Senator from California yield on that question?

Mrs. BOXER. Yes.

Mrs. MURRAY. I want to make sure I understand the process here because I am very concerned about the 46,000 women every year who die because of breast cancer. Friends of mine, friends of yours, and relatives want to make sure that we have in place the best possible assurance that when those women have a mammogram it will be safe and it will be accurate.

If the current bill passes as written, there is a real concern that the rules and regulations that are going to go into effect can be challenged, that they will not be put into place.

Is that correct?

Mrs. BOXER. The Senator is absolutely correct. As we said, and we saw on this floor arguments over interpretation, this bill is a lawyer's dream. I am not willing to put the women of America at risk so that a bunch of lawyers can go to court and squabble like we just saw happen on the floor of the U.S. Senate.

The Senator is right.

Mrs. MURRAY. So the underlying amendment will assure those regulations will go into place after October and women can have a mammogram and know that there is a degree of assurance of accuracy in it that does not exist today.

Is that correct?

Mrs. BOXER. That is true. The rule is going to specify performance standards for X ray equipment; it is going to expand and standardize requirements for recordkeeping on medical records and reports.

By the way, many times women are not notified in a timely fashion of the results of their mammogram. It sounds strange. But it is true. That is one of the areas this rule will cover.

Lastly, there will be expanded quality assurance to allow flexibility for review based on achievement of objectives.

The fact of the matter is that there will be more specific personnel requirements of the people who take these mammograms to ensure that they know what they are doing and do not miss a lump. They will specify procedures and techniques for mammograms of women with breast implants.

As I know the Senators know, we have worked on this issue. It is a big problem when a woman has a breast implant to figure out what is behind that implant. And it could be breast cancer that is undetected.

All of this will be in the rule. My friends on the other side of the aisle think so little of this amendment and this rule that they are willing to second degree it with a litany of wonderful promises that have absolutely no force and effect and impact of law.

Mrs. MURRAY. On that point, would the Senator from California agree that if the sense of the Senate passes, there is no way to go home and assure our mothers and sisters and our daughters that they are going to have safe, accurate mammograms?

Mrs. BOXER. I would say to my friend that not only is there no way to assure them, but I would warn them that a bill that had unanimous support has essentially been derailed, and a rule that was about to be promulgated was taken off track.

So I think the Senator is exactly right in bringing this home to a person-to-person discussion.

I am happy to yield.

Mr. KENNEDY. Let us come back just for a moment and look at where we are. We have accepted now the NUNN amendment, which provides certain provisions or procedures that are going to affect the small business. Now, we have the response of one of the floor managers which said that since this does not reach the capacity, that you might not even be affected. Under the NUNN provision, this would be affected.

Under the criteria for the examination, one of the matters that they have to look at prior to the implementation is voluntary compliance. That is one of the provisions. We have the voluntary compliance. We have geographical distribution, and other requirements for other provisions which I know others would love to be debating all afternoon about. But there are the voluntary requirements.

There will be those who will say, ''Why should we go ahead? Let us see what we can do from a voluntary point of view.''

Let us look at what happened when we had the voluntary compliance. Prior to the passage of the law, the American College of Radiology had a voluntary quality assurance program, and 38 percent of the clinics failed. Here they tried to do it voluntarily.

People asked why we need regulations. What we are saying is that those mothers who went in and got tested, and with inadequate manufacturing, inadequate procedures, and poorly trained people, thought they were free, and then come down with breast cancer when it could have been avoided, or at least their recovery could have been assured.

They say, ''Well, you have that heavy hand of Government regulation over there.'' I certainly would want that heavy hand if it is going to protect any member of my family. And I think most Americans would, because individuals cannot make air clean, they cannot make water clean, and they cannot solve all of their problems in terms of pesticides and other factors.

Let us see, voluntary—what happened in this particular issue affecting so many of the women in our country? We had a voluntary quality assurance program, and 38 percent of the clinics failed and a third did not even participate in the program. They said, We are not even going to participate. We do not know what happened because a third refused to participate in a voluntary program. That is an alternative.

We could go back into those kinds of procedures when we are about to see the implementation of something that is going to give assurance to the American public that we are going to have quality in terms of manufacturing, well trained, with a good kind of enforcement, hopefully, and assurance.

I just am amazed that—I am not really amazed because we go through this on many different issues. But this is really one of just such enormous importance and consequence to the families in this country when they say, ''Well, let us just try and not have regulations. Let us just have a voluntary process.''

Mrs. BOXER. If I may on my time ask my friend a question, that is, or my friend from Washington, how many times have you been in a community meeting in your home State of Massachusetts or your home State of Washington where a constituent has come over and looked you in the eye and grabbed you by the sleeve, and said, ''Please, Senator. Please, Senator, don't regulate mammograms. Don't regulate food and safety. You are doing too much to make the water safe''?

I really do not understand what is behind this bill. I mean, I do. I do. I think there is a lot of speculation behind it. But from the standpoint of the overall issues, has my friend ever been told that the heavy hand of Government is making mammograms too strict? I ask him.

Mr. KENNEDY. Absolutely not.

I think the American people hopefully are beginning to understand what this debate is about. Even with regard to OSHA, with 10,000 rules a year, if you had 99.9, or your child got 99.9, you would say, ''Pretty good; pretty good.'' Well, if you said 99.9 percent of the regulations were not tested, I am not even prepared to say that, and neither is the

head of OSHA. But if you are up to, say, 99.9, you would still have 100 regulations that made no sense, that none of us would support. And we are hearing them every morning, we hear our favorite 10. They are using that to undermine the importance of the protection of mammography or for our food or for our air, for our water. The American people, hopefully, are beginning to understand this.

All of us understand the importance of making progress and reducing the regulation and releasing the energies and expansion and trying to eliminate bureaucracy and duplication and overlap, and the leadership is being provided by Senator GLENN, by Senator LEVIN, and others in a bipartisan manner—Senator ROTH I see in the Chamber at this time. It has been bipartisan efforts that have come out of those committees virtually unanimous, Republican and Democrat. But we are throwing these over, at least not being able to address those kinds of issues and are being asked now to suspend, or effectively emasculate this particular kind of provision on mammography. That makes no sense.

I wish to commend the Senator and ask if she would agree with me that just doing a sense-of-the-Senate is really, I think, trying to raise a false sense of expectation. Would the Senator not agree that we are really doing something when we are not? And for all the lists that are made out there that the majority leader—I mean we will take some time and go through other kinds of diseases that may not have the total numbers of the ones that have been included, but nonetheless, unless they are listed or exempted, otherwise would fall under this process and procedure and put at risk families in this country. That would be unacceptable. Is the Senator troubled by that process as well?

Mrs. BOXER. I am troubled by this process. I think it is a back-door way to undo legislation that, as my friend has pointed out, was unanimous—everyone agreed with the legislation—but when it comes to the rulemaking, they try to stop it.

It is interesting; I do not know if my friends saw the poll which was done that clearly showed that when the American people were asked, ''Do you want to cut regulation that has to do with protecting health and safety and the environment?'' 62 percent said no.

Well, what does that mean? It means you do not go at the Clean Water Act, you do not go at the Clean Air Act, and you do not go at the Mammography Quality Standards Act, and you do not go at the Safe Drinking Water Act, but you back door it. And this is a clear-cut example of back-door politics. You do not take it on because the American people would be in an uproar. They want clean air. They want clean water. They want protection when they go for a mammogram or another medical procedure. They are fearful without standards.

We already know we have problems. The Senator pointed out that we have problems in this area. Is this a time to turn back when a third of the women get a result which says they are fine, there is no lump found, and in fact it is a false reading? My goodness, I think they would want us to do more, and that is what the rule is all about.

Mr. KENNEDY. Could I just ask one question? And I see others who want to inquire. Does the Senator find it somewhat ironic? Here we have seen in terms of national health policy that women have been effectively shunted aside. That was a tragic reality. It was tragic in terms of the NIH programs and investigation in osteoporosis, breast cancer and ovarian cancer, a wide range of different areas, even though there is basic research that is being done at the NIH in terms of clinical applications. But by and large one could say that women's health issues were not a matter of central importance in terms of the American health agenda. Now we have seen in very recent years, in the last Congress, one of the earliest pieces of legislation was to ensure that there was going to be a fundamental commitment in terms of the NIH for women's health-related issues for research. We are gradually catching up.

I would like to hear in this Chamber why we have the fact that women have half the number of heart attacks as men but only have half the recoveries men do. What is it about that? I mean why? We are putting resources in terms of research into these areas which affect real people and affect our families, and now we have seen that at last, under this administration with the leadership of President Clinton, Mrs. Clinton, BARBARA MIKULSKI, and both of our distinguished Senators who are here, Senator BOXER and Senator MURRAY, we have seen the effort to make sure that we are going to continue that progress. And here we have at the start of this Congress rolling into July a major assault on a major health issue that affects better than half of our population.

Do the Senators find in their own mind, I would ask either the Senator from California or the Senator from Washington, some puzzlement when we have been so far behind on women's health issues—and certainly that has been true in research in these other health policy questions—on one extremely important matter, and that is in terms of breast cancer, which affects so many, and increasingly so, and we know that we can make progress—there are so many areas that still escape us about what we can do in terms of making progress, but we know that in this area we can make a difference in terms of giving some assurance to women that there is a better chance of curing and treating breast cancer with these kinds of standards, that when we do have that opportunity, there are those who want to say no, or let us just go a different way and maybe we will end up with the same result. We do not know quite what these words mean. But why do the women of this country have to jump through these additional hoops as well?

Does the Senator find that somewhat ironic, that we find ourselves in that position on a Thursday afternoon when we ought to be trying to find out and be debating what more we could do in terms of women's health issues, children's health issues, parents' issues in this Chamber rather than try to put them at greater risk?

Mrs. BOXER. Not only do I find it puzzling, but I have to say to my friend, as he put his question forward, I realized something very interesting, and that is this is the third exemption amendment, as the Senator knows, that we are facing. The first one was E. coli, which is that bacteria that is found in hamburger meat and kills kids mostly and old people, and we have a case now in Tennessee—I do not know if the Senator is aware of it.

Mr. KENNEDY. We had Mrs. Sullivan from Haverhill, MA, who works hard all day—I address the Senate; I will not take much time—works all day, goes to school at night, active life, whose greatest problem was she ate a hamburger and $300,000 later and in a most painful, excruciatingly painful kind of condition at Mass General Hospital has been able to survive but is still today in a weakened condition. And we had, earlier this morning, her sister, who happens to be a nurse, and obviously because she was a nurse was able to, I think in a family situation perhaps, get somewhat earlier kind of treatment for that extraordinary woman whose life will never be the same—that with regard to food health standards. And then we have, as the Senator pointed out, the machine in here that is rolling over the protection of food safety for the American people. I just wonder why the Senator thinks this is the case.

Mrs. BOXER. I think if you read the Contract With America, there was a guideline in there. But what I wanted to make a point about, I say to my friend from Massachusetts, is this. When he asked the question, is it not interesting whenever an issue of women's health comes up we cannot seem to get any forward movement? What I wanted to point out to my friend from Massachusetts is this. When the E. coli amendment came up, I say to my friend, there was a substitute second-degree amendment that tried to deal with the E. coli problem. So there was a second-degree amendment to deal with the E. coli problem. And unfortunately it passed. It was not an effective way to go. We lost by two votes. Then the cryptosporidium one came up. They defeated that, up or down. But now that the Senators from California, Washington and Massachusetts and the other women in the Senate on the Democratic side, put together an amendment on breast cancer, guess what? What is the second-degree

amendment, I say to my friend? It has nothing to do with breast cancer. It has nothing to do with mammography. What is wrong?

Mrs. MURRAY. Would the Senator yield?

Mrs. BOXER. Yes.

Mrs. MURRAY. Is this the first sense-of-the-Senate that we have dealt with as well?

Mrs. BOXER. Oh, yes. This is the first sense-of-the-Senate. They substitute a very strong amendment to move forward mammography rules with a big fat nothing. A sense-of-the-Senate that does nothing and does not even mention women's health or mammography. It is extraordinary. And that is why I am willing to stand here day after day, and night after night, and morning after morning, with my friends, until we get a vote up or down on the mammography issue, and if my friends want to stay here through the weekend and through next weekend and the weekend after that.

Mr. KENNEDY. Would the Senator yield?

Mrs. BOXER. Yes.

Mr. KENNEDY. I want to commend all those who have been involved with this. But would she not agree with me—I did not want to take the focus off the issue really of the mammography—but basically what we are talking about—I call this the ''Polluters and Poisoners Protection Act.'' We are basically talking about not only in terms of questioning the safety on terms of breast cancer mammography standards, but we are talking about unsafe drinking water that will affect that family, and unsafe meat and the E. coli which you just referenced on that, and we are going to come down here to the change on the unsafe fruits and vegetables, and the unsafe baby foods with the changes in the food standard.

And as the Senator has focused on the E. coli, cryptosporidium debate last night, and now the mammography standards, basically we are talking about these other elements. Would the Senator not agree with me?

Mrs. BOXER. Absolutely. This is part of the process.

Mr. KENNEDY. This is part of the whole process. I want to indicate that the Senator has really brought the focus and attention on this area. We cannot solve all of the problems in these areas of drinking water, and meat and the vegetables and baby foods. We can make them a great deal safer. We think that we are putting at very significant risk all these kinds of protections for the American people. But the Senator from California is saying on the mammography we have specifics. ''Do not take this away from protecting the American women. Take your hands off these standards that can make a real difference for the protection of mothers and sisters and daughters.'' And I just want to commend her and thank her very much.

But I did want to inquire whether the Senator from California or the Senator from Washington agreed with me that we have parallel threats to these other areas in this legislation. And that the American people ought to understand that as well.

Mrs. BOXER. I certainly hope that the American people are watching this debate. You know, you can get off on these different sections of the bill. The lookback procedures, the petitions, all the rest of it. And that is what I believe the proponents of this bill want us to debate. They want to debate, how many days will it be reviewed? How many months will it be reviewed? The bottom line is this bill, if it passes without substantial amendment, is going to derail an urgent rule that is coming forward in October that will provide standards for those who are in the business of providing mammography, the majority of which are terrific people, but there are always those who cut around the edges. And that is why we need these rules, these national standards, so that a woman in California gets the same quality mammogram as a woman in Massachusetts or Tennessee or New Hampshire or Vermont or Rhode Island or Louisiana or Washington.

Mrs. MURRAY. Will the Senator from California yield?

Mrs. BOXER. Or Minnesota.

Mrs. MURRAY. Will the Senator from California agree with me—because I feel very puzzled and baffled and really concerned—that this amendment which deals very specifically with women, our mothers, our sisters, our daughters, our friends, who have had breast cancer, and who are counting on us as the Nation's leaders to assure them that when they go in for a mammography, that they have strict standards; that this amendment that deals with women, and women alone, has a sense-of-the-Senate second-degree; that I believe, if I am not mistaken, when the Senator spoke to it this morning she was not even able to send her own amendment to the desk. When her amendment was at the desk we were not allowed to speak about breast cancer for over an hour, but we did listen to a long litany about charts and graphs and process and long words and ambiguities. And we are finally here able to speak to the realness of this. But I also heard when this was being discussed before, ''Do not worry about this. It is only going to cost $98 million.'' Is that what the Senator from California heard as well?

Mrs. BOXER. Oh, yes. Yes. They say, ''Oh, the estimate of cost is $98 million. Since our bill says if you are under $100 million you do not come under this, do not worry. Do not worry.''

Mrs. MURRAY. Would the Senator yield?

Is it not clear that $98 million is darn close to $100 million, and could reach $100 million? And not only that, it is my understanding that in the House bill that has passed the threshold is $25 million.

Mrs. BOXER. Yes.

Mrs. MURRAY. When it gets to conference we will see somewhere between $25 and $100 million. So mammographies will be impacted.

Mrs. BOXER. Absolutely.

Mrs. MURRAY. Would the Senator not agree, in this legislation as currently drafted, it says if there is a significant impact on a substantial number of small entities it will be exempt as well? This amendment will not only be applicable because of the cost but it will also be because a substantial number of mammograms are done by small entities.

Is that not correct?

Mrs. BOXER. My friend is so correct. And I do not like to use—well, I will be as delicate as I can. I think claims on this Senate floor that mammography improvements are safe, without the Boxer-Murray amendment are false claims, because of what my friends have pointed out in this question time.

First, the fact that we know $98 million is the cost of this regulation. And that is about as close as you can get to $100 million. And, of course, when this bill goes to conference, with Newt Gingrich and his friends, they have a $25 million trigger. You do not need to go to Poli Sci 101 to know where the numbers come out. We will be lucky if it is $50 million. So ipso facto, protection gone.

And the second point that both my friends pointed out, which is important for this debate, is that under some amendments that we passed here, small businesses will be exempted if a substantial number, by the way not defined, talk about a lawyer's dream, substantial number of small businesses are impacted.

We are talking about endangering the lives of women. And when my friend says our sisters, our grandmothers, our daughters, our granddaughters, I think it affects our grandpas and our dads and brothers and our husbands too. When a woman gets breast cancer this is not only her fight. It is a family struggle. And when a family finds out that it was a mammogram that was not read correctly, or an x-ray machinery was defective, imagine the feeling that they lost a member of their family that could have been saved. And that is what we are talking about here. So if they want to talk on the other side about lookbacks and sunsets, and waivers and all the rest—it is new speak. We now have new speak around here. We do not get to the issues. Thank God for the Senator from Massachusetts for coming over here and helping us focus. Thank God for him for all these years fighting these battles, sometimes quite a lonely fight. I hope the American people listen, listen up. I am going to get a vote on the underlying amendment.

Mrs. MURRAY. Will the Senator from California yield?

Mrs. BOXER. Yes.

Mrs. MURRAY. Then I assume the Senator from California feels, as I do at this point, that we will not be dismissed by a sense-of-the-Senate

amendment; that on the underlying amendment, that clearly says to all women in this country that we will continue forward and put in place assurances for them on mammographies, there will be a vote on this floor.

Mrs. BOXER. We both guarantee that, and I know the Senator from Massachusetts joins us in that, as I am sure the Senator from Minnesota does, who is here listening and I am hoping will be asking us some questions in a short time. We are going to have a vote on the underlying amendment, period. Period. There is no recess that is going to stop us, either. You want to push us up against the recess? OK. Forty-six thousand women a year die of breast cancer. We will stay. We will stay through the summer. We will stay through Thanksgiving, Christmas. We will stay. We will stay through Hanukkah, Passover, Easter.

Mrs. MURRAY. The next Congress.

Mrs. BOXER. The next Congress, and none of us wants to have to do that because we have families, too. We have families, too. But we will do that because one in nine women is going to get breast cancer. Count up the women in this Chamber. Somebody is going to get breast cancer.

I will say this, sometimes you cannot help what happens. Sometimes you cannot help what happens. But many times you can, and we know that early detection is the major tool that we have in the fight against breast cancer.

Mr. WELLSTONE. Will the Senator yield for a question?

Mrs. BOXER. I will be glad to yield to my friend.

Mr. WELLSTONE. I will not take but a couple of minutes. I have from my office watched the Senator from California, the Senator from Washington, and the Senator from Massachusetts out on the floor, and I really have been moved by what you have said.

My wife, Sheila, is not here today. But her mom passed away from breast cancer, and we feel very, very strongly about these issues.

The Senator talks about having an up-or-down vote and we will be here for as long as it takes. If I could just ask my colleagues, why do you feel so strongly about this? Let us just forget all the statistics, all the charts, all the numbers. Why do you feel so strongly about this?

Mrs. BOXER. Well, I thank my friend for asking the question. I feel so strongly about this because I think that this bill is a backdoor attack on a very important series of laws that were passed in a bipartisan way to protect the American people. I feel very strongly it is a backdoor war on these laws. That is how I feel, because I do not think there would be support for repealing any of these acts. There are a lot of special interests out there that do not want the Clean Water Act and the Clean Air Act. Why? Because they feel it in their pocketbook.

While we all agree we do not want unnecessary and burdensome regulations, and all of us are willing to vote to end that, we feel deeply committed that we will not reverse years of progress. I do not care if it is in the Contract With America.

So I feel very strongly that when there is an attack on a law that protects the health and safety of the American people, it is an obligation of U.S. Senators to point it out and to stand on their feet and to fight. I think that is what we are doing.

We all know people who have been misdiagnosed.

I talked about a friend of mine who, because the mammogram was not read properly, suffers terribly, and we pray that she will make it. But every day is like a nightmare because she did not catch it early.

Mrs. MURRAY. If the Senator from California will yield.

Mrs. BOXER. Yes.

Mrs. MURRAY. The Senator has asked a critical question, why would somebody be willing to stand out here on their feet and speak over and over until they are given an up-or-down vote on a very simple amendment. It is because of the women we know—personal friends and personal relatives who have died from breast cancer because it was not detected early. One out of nine women today will be diagnosed with breast cancer. Nine out of ten women will survive if it is detected early. I am determined to make sure that on my watch on this floor of this Senate that I will not allow any of those women to go undetected. I think it is incumbent upon all of us to see that that occurs.

Mr. HATCH addressed the Chair.

Mr. KENNEDY. Will the Senator yield?

Mr. HATCH. Will the Senator yield?

Mrs. BOXER. I am not yielding at this time.

The PRESIDING OFFICER. Will the Senator yield to the Senator from Utah?

Mrs. BOXER. No, I will not. When I simply asked for a parliamentary inquiry before, Senators would not yield to me.

Mr. HATCH. I would have yielded to you. You did not ask me.

Mrs. BOXER. I yield to my friend for a parliamentary inquiry without losing my right to the floor.

Mr. HATCH. I appreciate that. I thank you. Let me make a couple comments. There is nobody on this floor that feels more deeply about mammography than I do. Nobody.

Mrs. BOXER. I ask, is this a parliamentary inquiry?

Mr. HATCH. Yes, I am going to ask a question, and I want to make a few statements so I can get to the question.

There is nobody on this floor who has worked harder, as one of the prime cosponsors of the mammography bill. But is it not true that there is an interim rule in effect on mammography?

Mrs. BOXER. The interim rule does not affect the issues that I read to the Senate. I will reread them. It does not go to these issues. These issues are of crucial importance. They involve the performance standards for x-ray equipment; expanding and standardizing requirements for recordkeeping; expanding quality assurance; clarifying personnel requirements; and specifying procedures and techniques for mammography for examinees who have breast implants.

Mr. HATCH. Are they not in effect now?

Mrs. BOXER. No, there is no rule. I will be happy to share this with the Senator. This is a description of the rule that is going to go into effect in October.

Mr. KENNEDY. Will the Senator yield?

Mrs. BOXER. Yes; I will be happy to yield.

Mr. KENNEDY. As I understand, if the Senator stated it accurately, the new rules are likely to be significant improvements to the interim rule. They include performance standards for radiological equipment; standards for uniform imaging of women with breast implants; and establishing consumer plate procedures.

None of these areas are addressed in the interim regulations. So the interim rule, although much better than what would have existed, still will be strengthened with the permanent requirements.

I see others who want to speak, but let me mention, I was listening to the exchanges. I was going back into the hearing record and the testimony of Dr. Roper, who was the head of the CDC when we were having those hearings, and pointing out the controlled studies have shown that a 35- or 40-percent reduction in mortality related to breast cancer is possible.

I will make a comment and ask the Senator whether she agrees with this. Does the Senator agree that Dr. Roper's testimony was powerful testimony when he pointed out that controlled studies have shown that a 35- or 40-percent reduction in mortality related to breast cancer is possible? However, in order to achieve this level mammography, clinical examination must be performed, interpreted, and reported as accurately as possible. Subsequent steps, including biopsies and other followthrough procedures, must be timely and of high quality.

We, along with the Public Health Service Agency and relevant professional organizations, provide leadership to aggressively pursue a program designed to ensure the highest standards of excellent and early detection of breast cancer with mammography and assure the maximum benefit for lifesaving technology for all Americans.

This is the testimony in favor of this legislation by the head of the Centers for Disease Control, appointed by the previous administration. Controlled studies have shown that a 35- to 40-percent reduction in mortality for cancer is what we are talking about for women.

Let me just ask the Senator whether she would agree with what was a very powerful comment, and that was during the course of our hearing, Mrs. Langor, who is the head of the National Association on Breast Cancer. This is her statement. I ask what is the reaction of the Senator from California.

We hear many sad things at NABCA, but one of the saddest is the story of the woman who has done everything correctly. She scheduled her mammogram, has received a clean bill of health, then she finds she is dying of breast cancer, not always due to negligence, but rather due to inexperience, poor equipment maintenance, or wrong equipment. She was relying on her medical provider to develop quality care. Her life has been destroyed. Her confidence is gone. She has conveyed this message to every woman she knows. A vital element in our attempts to control the breast cancer epidemic is knowing that after our hard work reaching, educating, and reassuring every American woman about mammography, that it is increasingly safe and affordable, mammography is also universally effective. It is the right of American women to receive screening mammography of the highest quality and the responsibility of lawmakers to grant them that right.

You cannot say it any better than that. That is what the mammography standards bill has done. This legislation is putting this at risk. At risk is that very eloquent statement.

I ask the Senator, again, why we should take any risks at all in doing it after we have had all the testimony in the world. We know about the problems we cannot solve. We can make an important impact in terms of the safety and continued life of women in our society. Why should we throw that over and go to some other kind of process and procedure which, for me, is not worth the paper that we have it written on.

Mrs. BOXER. I thank my friend. He is so right. Women are already at risk for breast cancer. Forty-six thousand a year die of it, and now we are going to add to the risk and derail a rule that—no matter how many times the Senator asked me the question, I will come back and tell you, no, there are no final regulations in place for the x-ray machines. There are no regulations. There are regulations in place for accreditation.

Mr. JOHNSTON. Will the Senator yield for a question?

Mrs. BOXER. Yes.

Mr. HATCH. Will the Senator yield for a unanimous-consent request?

Mrs. BOXER. Of course.

UNANIMOUS-CONSENT AGREEMENT

Mr. HATCH. I would like to resolve this.

Mr. President, I ask unanimous consent that amendments numbered 1524 and 1525 be withdrawn.

Mrs. BOXER. Reserving the right to object.

Mr. HATCH. This is agreed to by both sides. We are going to give you a separate vote.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. Reserving my right to object.

The PRESIDING OFFICER. Is there objection to the Senator's request?

Mrs. BOXER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. BOXER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. BOXER. If the Senator will propound the unanimous-consent request, I think we are ready.

Mr. HATCH. I ask unanimous consent that amendments 1524 and 1525 be withdrawn.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

So, the amendments (Nos. 1524 and 1525) were withdrawn.

UNANIMOUS-CONSENT AGREEMENT

Mr. HATCH. Mr. President, I will soon send an amendment to the desk and ask for its immediate consideration.

I ask unanimous consent that no other amendments be in order, that a vote occur on the amendment at 5:05 p.m., with the time equally divided in the usual form.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. Reserving the right to object. I want to make sure that before the vote on the Boxer-Murray-Mikulski amendment there be 1 minute on either side.

Mr. HATCH. If we hurry, we have almost 8 minutes.

Mrs. BOXER. I want to make sure that there is a little time on each side.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HATCH. Mr. President, I ask unanimous consent that following the vote Senator BOXER be recognized to offer an amendment, the text of which is amendment No. 1524, and that no amendments be in order to the Boxer amendment, and a vote occur immediately after 1 minute for Senator BOXER and 1 minute for Senator HATCH, without any intervening action or debate on the Boxer amendment.

Mr. JOHNSTON. Reserving the right to object, and I shall not, I have had a conversation with the Senator from Utah and the Senator from Oklahoma about whether we would be able to accept the other pending amendment, which is the Superfund amendment, accept that by unanimous consent. Do we know whether we can do that at this time?

Mr. HATCH. I am not prepared to do that at this time. But we will certainly look at that.

Mr. JOHNSTON. I say to my colleagues that I think that is in the works. That is, I have requested that we be able to do that. And so I hope after the vote on the Boxer amendment, we would be able to accept that by unanimous consent. I would assume that no one on our side would object. But I would like to get that notice out just in case.

Mr. HATCH. Certainly.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Without objection, it is so ordered.

AMENDMENT NO. 1531 TO AMENDMENT NO. 1487

Mr. HATCH. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah [Mr. HATCH] proposes an amendment numbered 1531 to amendment No. 1487.

Mr. HATCH. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the amendment, add the following: It is the sense of the Senate that nothing in this Act is intended to delay the timely promulgation of any regulations that would meet a human health or safety threat, including any rules that would reduce illness or mortality from the following: heart disease, cancer, stroke, chronic obstructive lung diseases, pneumonia and influenza, diabetes mellitus, human immunodeficiency virus infection, or water or food borne pathogens, polio, tuberculosis, measles, viral hepatitis, syphilis, or all other infectious and parasitic diseases.

Mr. HATCH. Mr. President, I ask unanimous consent that no further amendments re: exemptions for mammography be in order during the pendency of S. 343.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. If I can be clear about the order. The Senator from California has 5 minutes and the Senator from Utah has 5 minutes, is that correct? I want to make that clear. Or is the floor open to whoever seeks recognition?

The PRESIDING OFFICER. The time between now and 5:05 is evenly divided between the two Senators, which means the Senator has about 3½ minutes.

Mrs. BOXER. Thank you very much, Mr. President.

I have no objection to voting for the sense-of-the-Senate resolution offered by Senator DOLE. That is fine. It has nothing to do with my amendment, however, which gets to the issue of mammography. I hope Senators, in a bipartisan spirit, will support both.

There is nothing wrong whatsoever with Senator DOLE's amendment. It is just that, for the last, let us see, about 3 hours he intended for it to substitute for the BOXER-Murray-Mikulski amendment which, to this Senator, made no sense, and to many other Senators, it made no sense.

I am not going to yield to anybody because I only have 2½ minutes. I hope that Senators are listening to this debate. It has been clearly demonstrated via the fact that if we do not pass the Boxer-Murray amendment, we are playing Russian roulette with women's lives. Let me tell you why. In October, a rule is going to go on the books that sets standards for mammography. It is carrying out a law that passed in 1992.

This is not fun and games. This is about breast cancer that is going to strike one out of every nine women in this Chamber. The most painful situation is one where a woman was told her mammogram was fine, only to find out the technician could not read it or the machine was faulty and she has to undergo the most radical kind of therapy.

So my friends can argue about line 6 and line 2 and sunset clauses and all the rest. If Members care about this, Members vote yes. Play it safe for the women of this country and do not gamble. The rule that is about to come out is a rule that will make it far safer. Why on God's green Earth do we want to derail that? To score a political point?

Think again. The American people are catching on to this debate. This is a back-door assault on a bill that was passed in 1992 by Republicans and Democrats alike. But rather than repeal sections of it, we are making it so hard that the rule to carry it out will never go into place.

The first day a Senator's wife comes down with breast cancer and it was missed on a mammogram, we will be on the floor changing this bill.

Mr. President, 46,000 women every year die of this disease. We have talked about our moms, our grandmothers, our sisters, and our daughters. What about the fathers and sons and the grandfathers? It affects each and every American, just as when a man gets prostate cancer and is taken away from the family.

If ever there was a time to pull together as Senators for both parties, this is it. Why do we have to fight over everything around here?

Ms. MIKULSKI. Mr. President, I rise today to join my colleague, Senator BOXER, in offering this amendment that protects the public health by ensuring the continued implementation of mammography quality rules.

As the original coauthor of the Mammography Quality Standards Act, I was especially proud when this act was adopted in 1992. The Mammography Quality Standards Act requires all facilities providing mammography to be accredited and certified. This is extremely important in our efforts to detect breast cancer early when treatment is available and less invasive.

For the past year, the mammography quality standards have been reviewed by a Mammography Advisory Committee. It is my understanding that the FDA is now prepared to move forward with the publishing of these rules in October.

The women of America have waited since October 1992 for these mammography quality standards to be implemented. A delay at this time will result in needless deaths and disability by women who are tested by facilities and equipment not meeting Federal, uniform quality standards for mammography.

We are so close in getting these final rules for mammography quality standards approved. We must ensure that the mammogram women receive is of the highest quality possible.

I urge immediate passage of this amendment.

Mr. COHEN. Mr. President, I am pleased to sponsor this important amendment to ensure that regulations providing for quality standards in mammography screening are fully implemented as swiftly as possible.

Despite promising scientific advances in the treatment and diagnosis of breast cancer, this disease remains a major health threat to millions of American women. Breast cancer is the second leading cause of death among women. Last year alone, it is estimated by the National Cancer Institute that over 182,000 new cases of breast cancer were diagnosed and more than 46,000 women in the United States died as a result of this devastating disease.

This disease often strikes women in the prime of their lives and, as women get older, the odds of developing breast cancer steadily increase. One in eight women will develop breast cancer at some point in their lives. With statistics this sober, nearly every family will be directly affected by this disease.

In 1992, I cosponsored the Mammography Quality Standards Assurance Act because I knew of the critical importance of accurate breast cancer screening. Mammograms are among the most difficult tests to perform. If images are not clear or if tests are improperly read, cancers can be missed, leading to delayed treatment and premature death.

Prior to the adoption of this act, only a patchwork of Federal State, and voluntary standards existed for mammography. Women could not be assured that their mammograms were properly administered, interpreted or communicated to them or their physicians.

In absence of a cure, mammography and the early detection of breast cancer is still the most effective weapon women have to fight this increasingly common—and often fatal—disease.

Currently, the FDA has in place interim rules for the Mammography Quality Assurance Act which establish national standards to ensure the safety and accuracy of breast cancer screening procedures. However, the final proposed regulations are not expected until this October. While the interim regulations are enforceable and have established rules for accreditation, certification and annual inspection, it is crucial that we do not delay in full implementation of final regulations.

I am aware that there are questions as to whether S. 343 would have any effect on the implementation of these standards, but I believe that it is critically important to be absolutely sure that these regulations are not derailed, or delayed. The mammography standards were passed nearly 3 years ago and we must move forward on this important women's health issue.

The proposed final regulations further ensure the safety of mammography in significant ways. They specify performance standards for x-rays, develop procedures for examining women with breast implants and standardize requirements on medical records and mammography reports. Each of these reforms are essential to ensuring that all mammography done in this country is as reliable as possible.

Early detection of breast cancer will save countless lives. The Mammography Quality Standards Assurance Act ensures that women get the best possible breast cancer screening and that they will have the best chance of treating their cancer once diagnosed.

We owe it to each family touched by this devastating disease that these critical standards be exempted from any additional regulatory delays and that they become effective before more precious lives are lost to breast cancer.

The PRESIDING OFFICER (Mr. ABRAHAM). All time has expired.

Mr. HATCH. Mr. President, I think this is important, and I am glad to have an opportunity to get the points on the record.

I have to say again that interim regulations are by definition final. Perhaps the new, proposed regulations will be here in October; we have been assured by those on the other side that this is so.

But I have to keep point out that these interim regulations do have the full force and effect of law.

This particular debate is filled with misrepresentations. Nevertheless, I still think it is an important debate and I am glad to have an opportunity to get some key points on the record.

Mammography is an important tool in our effort to fight a dread disease which now affects an estimated one in nine women.

I believe we should do all we can to protect against breast cancer. I am one of the original sponsors to help to write one bill that does this. I am the sponsor of a bill last year to require that another breast cancer screening tool, self-examination, be taught at all federally funded health clinics. My record in this area is clear.

But whether or not we want to fight breast cancer is not the point of this debate. Of course, we all want to fight breast cancer, and all other cancers for that matter.

The point is that there are regulations in effect to implement the Mammography Quality Standards Act. They were promulgated in December 1993, 1½ years ago.

Nothing I have heard in this Chamber changes that or has convinced me a new proposed regulation under MQSA,

would make a significant improvement in the health of women who might get breast cancer.

Nevertheless, in the spirit of moving the larger debate along and recognizing that by the administration's own published estimate, it is likely new rules from MQSA would not be subject to the cost-benefit analysis of this bill, I, personally, am willing to accept this amendment.

If this amendment is necessary to give America's women peace of mind, I think it should go forward, even though I, personally, believe it is not needed.

I do have to underscore again that this bill addresses the mammography situation. It addresses the E. coli. If a rulemaking meets the bill's thresholds, there still can be exemptions for health emergencies or even health threats. It is hard to believe that the administration would not consider the possibility of meat contamination or increased exposure to breast cancer threats to public health.

Our bill allows those exemptions as I have cited before.

I personally resent the representations that have been made on the floor in this regard. It is important that members read the language of the bill; perhaps they have not.

The Glenn bill does not allow such exemptions. We put a lot of effort to make sure we take care of these problems.

I am frustrated because we are undergoing untold hours on the floor just, for the most part, so that political points can be made.

I think it is time to start working on the heart of this bill. If there are major problems in this bill that really need to be corrected, we should address them.

I hate to say this, but I have been working in good faith to try to accommodate the other side, to try to work on this problem and get this matter resolved, and make sure that they are happy with these provisions.

I am concerned because I perceive that we are continuing to get amendments which are permutations of issues which have already been resolved, such as the impact of the bill on the ability of Federal agencies to address public health problems.

One has to conclude that the purpose of all this is to drag out the debate. That is fine.

My personal recommendation is that we should vote for both amendments and get this past us and move on from there. We need to start working on the bill, rather than all these amendments that really do not deserve to see the light of day because we have taken care of them in the bill.

I do not see how anybody can disagree with that.

Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from New Mexico [Mr. BINGAMAN] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 304 Leg.]

YEAS—99

Abraham	Feinstein	Lugar
Akaka	Ford	Mack
Ashcroft	Frist	McCain
Baucus	Glenn	McConnell
Bennett	Gorton	Mikulski
Biden	Graham	Moseley-Braun
Bond	Gramm	Moynihan
Boxer	Grams	Murkowski
Bradley	Grassley	Murray
Breaux	Gregg	Nickles
Brown	Harkin	Nunn
Bryan	Hatch	Packwood
Bumpers	Hatfield	Pell
Burns	Heflin	Pressler
Byrd	Helms	Pryor
Campbell	Hollings	Reid
Chafee	Hutchison	Robb
Coats	Inhofe	Rockefeller
Cochran	Inouye	Roth
Cohen	Jeffords	Santorum
Conrad	Johnston	Sarbanes
Coverdell	Kassebaum	Shelby
Craig	Kempthorne	Simon
D'Amato	Kennedy	Simpson
Daschle	Kerrey	Smith
DeWine	Kerry	Snowe
Dodd	Kohl	Specter
Dole	Kyl	Stevens
Domenici	Lautenberg	Thomas
Dorgan	Leahy	Thompson
Exon	Levin	Thurmond
Faircloth	Lieberman	Warner
Feingold	Lott	Wellstone

NOT VOTING—1

Bingaman

So the amendment (No. 1531) was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ROBB. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Chair recognizes the Senator from California.

AMENDMENT NO. 1532 TO AMENDMENT NO. 1487

(Purpose: To protect public health by ensuring the continued implementation of mammography quality rules)

Mrs. BOXER. Mr. President, I call up my amendment which is at the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. BOXER], for herself, Mrs. MURRAY, Ms. MIKULSKI, Mr. LAUTENBERG, Mr. BRADLEY, Mrs. FEINSTEIN, Mr. DORGAN, Mr. KENNEDY, Mr. REID, Mr. BUMPERS, Mr. BIDEN, Mr. LEAHY, Ms. MOSELEY-BRAUN, and Mr. DASCHLE, proposes an amendment numbered 1532.

On page 19, strike the period and insert the following: ''; or (xiii) a rule intended to implement section 354 of the Public Health Service Act (42 U.S.C. 263b) (as added by section 2 of the Mammography Quality Standards Act of 1992).''.

Mrs. BOXER. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mrs. BOXER. Mr. President, I believe under a previous order I have 60 seconds to present the amendment.

The PRESIDING OFFICER. The Senator is correct.

Mr. FORD. Mr. President, may we have order? The Senator deserves to be heard.

Mr. President, we are not in order. Mr. President, I make a point of order that the Senate is not in order.

The PRESIDING OFFICER. The Senate will come to order.

Mrs. BOXER. Mr. President, the amendment that is before the Senate would exempt the new mammogram rules from this bill. When you vote on the Boxer-Murray-Mikulski amendment, I ask you to think about your mother, your sister, your daughter, your granddaughter, and cast a vote that will assure them the best chance to survive breast cancer. And the best chance to survive breast cancer is to have the best equipment run by the best personnel.

That is what these rules are all about. We do not want to derail those rules because, otherwise, the cancer could be missed. And all of us know too many cases where tragedy has ensued. The better standards that are being proposed in the rule that will come out in October will absolutely be derailed because they came out after the April date that is specified in this bill.

So without the Boxer-Murray-Mikulski amendment, and so many other good Senators who are on it, we will derail safe mammograms.

Please vote aye and join with the National Breast Cancer Coalition in support of mammography quality standards.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I am going to recommend that everybody in the Chamber vote for this amendment, but I have to say this is another 3- or 4-hour expenditure of time that did not have to occur.

The administration, by its own official publication, said only 10 weeks ago that the anticipated costs of implementing the Mammography Quality Standards Act of 1993, a bill that I helped to write, would be about $33 million.

Now we are told up to $97 million, although the administration has not provided us with any details on that cost estimate or why it has changed so dramatically in 10 short weeks. But in any case, $97 million is still $3 million less than the threshold of this bill and could be made even less if the administration so desired.

On the other hand, I do think we should vote for it, because it may give some peace to some people who do not

understand this matter is already covered.

I continue to believe that our bill would not engender the ill effects the other side believes.

However, breast cancer is a serious, serious problem, and I would not want to create any feelings in that community that the Congress does not take the problem seriously. Because we do.

So I think that we should vote for the Boxer amendment, and then move on.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FORD. I announce that the Senator from New Mexico [Mr. BINGAMAN] is necessarily absent.

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 305 Leg.]

YEAS—99

Abraham	Feinstein	Lugar
Akaka	Ford	Mack
Ashcroft	Frist	McCain
Baucus	Glenn	McConnell
Bennett	Gorton	Mikulski
Biden	Graham	Moseley-Braun
Bond	Gramm	Moynihan
Boxer	Grams	Murkowski
Bradley	Grassley	Murray
Breaux	Gregg	Nickles
Brown	Harkin	Nunn
Bryan	Hatch	Packwood
Bumpers	Hatfield	Pell
Burns	Heflin	Pressler
Byrd	Helms	Pryor
Campbell	Hollings	Reid
Chafee	Hutchison	Robb
Coats	Inhofe	Rockefeller
Cochran	Inouye	Roth
Cohen	Jeffords	Santorum
Conrad	Johnston	Sarbanes
Coverdell	Kassebaum	Shelby
Craig	Kempthorne	Simon
D'Amato	Kennedy	Simpson
Daschle	Kerrey	Smith
DeWine	Kerry	Snowe
Dodd	Kohl	Specter
Dole	Kyl	Stevens
Domenici	Lautenberg	Thomas
Dorgan	Leahy	Thompson
Exon	Levin	Thurmond
Faircloth	Lieberman	Warner
Feingold	Lott	Wellstone

NOT VOTING—1

Bingaman

So the amendment (No. 1532) was agreed to.

Mr. JOHNSTON. I move to reconsider the vote by which the amendment was agreed to.

Mrs. BOXER. I move to lay that motion on the table.

So the motion to lay on the table was agreed to.

Mr. JOHNSTON. What is the pending business?

AMENDMENT NO. 1517

The PRESIDING OFFICER. The pending business is the Johnston amendment No. 1517.

Mr. SMITH. Mr. President, as the chairman of the Senate Subcommittee on Superfund Waste Control and Risk Assessment, and as a member of the Governmental Affairs Committee, I have been closely following the progress of the pending regulatory reform legislation, S. 343, as it pertains to Superfund. I believe this is an important bill, and I think it makes a significant improvement in modernizing an outdated regulatory system.

I have to admit that I have some concerns about Superfund being specifically targeted for reform in this legislation. Before I outline these concerns, however, I think it is important to recognize how we have gotten to this point.

Everyone in this Chamber can agree that our Nation's system of environmental regulations has had its successes: Americans are breathing cleaner air, and drinking cleaner water today than they did a generation ago. Nonetheless, there is uniform consensus that the Superfund program, however well intended, is not living up to its promises. Over the last 14 years we have spent over $30 billion dollars on this program, yet today, we have completed the cleanup at only 70 of the more than 1,300 sites on the national priorities list. Clearly we can and must do a better job of cleaning up these sites.

Beginning this past January, I conducted a series of 7 hearings and received testimony from more than 60 witnesses in an effort to formally incorporate a wide variety of views on the issue of Superfund reform. In addition, Congressman MIKE OXLEY, the chairman of the House Subcommittee on Commerce, Trade and Hazardous Materials, and I met with numerous groups in candid, off-the-record meetings. Participants included: environmental groups, potentially responsible parties, representatives of the environmental justice movement, State and local governments, the Environmental Protection Agency, the Department of Defense, the Department of Energy, the Department of Interior, think tanks, and insurance companies.

After taking the time to digest and analyze the information provided by these groups, I released, on June 28, 1995, a Superfund reform outline which is a comprehensive effort to radically reform the Superfund program. At this time, I ask that a copy of my proposal be entered in the RECORD after my statement.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Based on comments I have received in response to this proposal, I plan on quickly moving to draft a Superfund reauthorization measure that will be available later this summer. I have pledged to the majority leader, Senator DOLE, that this legislation will be available for full Senate consideration and final passage later this year.

This past Monday, I visited a variety of Superfund sites in New Hampshire. One of these sites, the Coakley Landfill in North Hampton, NH, involved the cleanup of a former landfill site. After 10 years of study, the Environmental Protection Agency determined that in addition to capping the site, it wants to require the construction of a $10-million-dollar groundwater pump and treat system. The EPA is insisting on this remedy even though there are no pathways to human exposure, and even though the pollutant could be addressed in the same amount of time through natural attention. All of the potentially responsible parties, the State of New Hampshire, and the local communities have agreed that this expensive system in not necessary. Nonetheless, the EPA is continuing to go forward.

I can understand the impatience of my colleagues in dealing with this frequently onerous program, and I can appreciate their desire that Superfund be addressed in this legislation. Frankly, in light of its past record, the Superfund program is the poster child for regulatory reform. Nonetheless, given the fact that my subcommittee has been working diligently to quickly develop legislation on this issue, I believe that this matter should be addressed in the context of a comprehensive Superfund reauthorization bill, rather than in S. 343. For this reason, I am asking my Republican colleagues to join me in supporting the Baucus amendment.

I want to make something perfectly clear. Although I would prefer that these issues be dealt with in the context of a Superfund reauthorization measure, I agree in spirit with the changes included in this legislation. The fact is that all too frequently the Superfund program ignores common sense principles when dealing with toxic waste cleanups.

I believe that risk assessment and benefit-cost analysis should be utilized in determining how and when we will be cleaning up these toxic waste sites. While I think it is appropriate that this language not be included in the regulatory reform legislation, I want to make it very clear that the use of appropriate risk assessment and benefit-cost analysis will be part of a comprehensive Superfund reform measure.

EXHIBIT 1

SUPERFUND REFORM OUTLINE

(Introduction from Senator Bob Smith)

The Superfund program has had its successes. It is not, however, a successful program. When seeking input on the future of hazardous waste cleanup in the United States, I held no preconceived notions about what would or would not work. I believed that every legitimate idea had a place on the table, and was guided by one important premise: the Superfund program is in need of dramatic reform. My goal has been—and will continue to be—to solicit input and support from all interested parties to achieve that reform.

Creation of this document was an open process. The Subcommittee on Superfund, Waste Control, and Risk Assessment, which I chair, held 7 hearings and received testimony from more than 60 witnesses in an effort to formally incorporate a wide variety of views on the issue of Superfund reform. In addition, Congressman Mike Oxley, the Chairman of the House Subcommittee on Commerce, Trade, and Hazardous Materials, and I met with numerous groups in candid, off-

the-record meetings. Participants included: environmental groups, potentially responsible parties, representatives of the environmental justice movement, state and local governments, the Environmental Protection Agency, the Department of Defense, the Department of Energy, the Department of Interior, think tanks, and insurance companies. I also solicited the input of all members of the subcommittee, Chairman John Chafee, Ranking Member Max Baucus, and the Majority Leader.

The release of this Superfund Reform Outline is a natural extension of that process. The purpose of the document is to solicit additional constructive comments, ideas and criticisms that can be used during the bill-drafting process. The document is divided into three parts. Section I provides a brief history of the Superfund program, beginning with its inception in 1980 and continuing through to present day. Section II explains the principles that were used to guide the development of the reform measures. Section III provides a detailed summary of my recommended proposals.

The legislative proposals contained in Section III are intended to serve as the building blocks for a comprehensive reform of the Superfund program. They are not intended to be all inclusive, and no signal, either positive or negative, is intended if any item has been omitted from the outline. It is plausible that the final version of a comprehensive Superfund reform program may not precisely mirror all of the elements contained in this document.

I would appreciate that any specific comments on this plan be provided in writing. These comments should include your name, address and phone number, and should be forwarded no later than July 10, 1995, to:

Jeff Merrifield, Counsel, Subcommittee on Superfund, Waste Control and Risk Assessment, Hart Senate Office Building, Washington, DC 20510.

The Superfund program must be transformed into a more responsive, efficient and fair system for cleaning up hazardous waste sites and returning them to productive use. I believe this document provides a blueprint for reaching that goal. I look forward to receiving your input.

SECTION I—BRIEF HISTORY

The Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), also known as ''Superfund'', was passed and signed into law during the post-election session of Congress in 1980. The Superfund program was intended to enhance the federal government's ability to compel parties responsible for causing contamination at sites such as Love Canal, New York, and the ''Valley of the Drums'' in Kentucky, to either clean up the contamination or reimburse EPA for the costs of doing so.

The cleanup program that Congress enacted was premised on the principle that the ''polluter pays,'' through a system of strict, retroactive, joint and several liability. If those responsible for site contamination (potentially responsible parties or ''PRPs'') could not be found, or were unable to pay, EPA could use a special Trust Fund (hence the term ''Superfund'') to pay for the cost of cleaning up these sites. This ''Superfund'' was funded through taxes on the chemical and petroleum industries. Superfund was further amended in 1986 when Congress enacted the Superfund Amendments and Reauthorization Act of 1986 (''SARA''). SARA extended and expanded the Superfund taxes and authorized expenditures of $8.5 billion through December 31, 1991.

Although the Superfund program has achieved some successes, there is widespread agreement that the program is troubled. When CERCLA was enacted, it was expected that only a few hundred sites would need to be cleaned up and that the program would require relatively modest funding. Both of these expectations have proven to be inaccurate. Currently, there are over 1,300 sites on the Superfund list (known as the National Priorities List or ''NPL''), and during the last few years, EPA has been adding an average of approximately 30–40 new sites per year to the NPL. To date, the construction of long-term cleanup remedies have been completed at fewer than 300 contaminated sites.

As the magnitude of the problem has increased, the projected cost of the program has risen accordingly. Congress originally set aside $1.6 billion for NPL cleanups when it created the Trust Fund in 1980. Six years later, Congress increased the amount in the Fund to $8.5 billion. In 1990, Congress added another $5.1 billion. Overall, it is estimated that the total amount of money spent on Superfund since 1980, including the settlement costs of PRP's, is in excess of $25–$30 billion.

Given these problems, the Superfund program has been widely criticized, primarily on the following four major grounds: (1) the liability system is unfair and has resulted in excessive litigation and other transaction costs, diverting attention and money from site cleanup; (2) the cumbersome and often overly prescriptive remedy selection process has delayed clean up actions and driven up cleanup costs; (3) states and local citizens do not have the ability to fully participate in the selection and implementation of appropriate remedies; and (4) the stigma of being listed as a Superfund site often creates economic disincentives for the redevelopment and reuse of contaminated properties.

SECTION II—GUIDING PRINCIPLES

Community Empowerment.—The citizens who are most adversely impacted by the cleanup of hazardous waste sites near their homes should be empowered with a greater role in the decisionmaking process and an increased responsibility in helping to select the remedial action that will protect human health and the environment, foster rapid economic redevelopment, and promote expedited restoration of natural resources.

Enhanced State Role.—The states have developed an extensive and sophisticated level of expertise in addressing the problems of hazardous waste contamination outside of the Superfund program. Reform of Superfund should recognize this level of expertise, and should endeavor, to the greatest extent possible, to empower the states to assume the lead role in the Superfund process. An enhanced state role recognizes that the states have a much greater day-to-day involvement with their citizenry and are in a better position to respond to the needs and desires of the affected communities.

Sensible Cleanup Standards.—The goal of protecting human health and the environment must remain at the forefront of any Superfund reauthorization measure. Nonetheless, sensible Superfund reform efforts recognize that our ability to clean up some sites is constrained by both a technical inability to provide permanent solutions, as well as a limitation on national financial resource. Cleanup decisions should be premised on a careful analysis of the potential risks to human health and the environment, as well as a logical balancing of financial expenditures on remedy selection.

Establish Fairer Liability Requirements.—When Superfund was originally adopted in 1980, its primary purpose was to clean up hazardous waste sites that threatened human health and the environment. The adoption of retroactive liability to pay for this program has unfairly penalized a number of individuals and corporations that disposed of hazardous materials in compliance with then existing federal and state environmental laws. In addition, this liability system created an incentive for litigation which has resulted in slower cleanups and more money going to lawyers. The reform of the Superfund should not only strive to lessen incentives for litigation, but it should also result in a greater percentage of money being dedicated towards cleaning up sites.

Restoring Natural Resources.—The sole purpose of natural resource damages is to provide for the rapid restoration and replacement of significant natural resources that have been damaged by contact with hazardous materials. Financial compensation from persons who caused these damages should be used solely for the purpose of restoring or replacing these resources, and should not serve as a means of seeking retribution or punitive damages from potentially responsible parties.

Expedited Economic Reuse.—Although the original purpose of Superfund was to provide for the quick cleanup of hazardous waste sites, the Superfund cleanup process has resulted in delayed site cleanups, economic uncertainty for affected communities, and a disincentive for industry to redevelop so called ''brownfield sites.'' Reform of Superfund should provide incentives for the voluntary cleanup of industrial sites and the expedited reutilization of urban areas to promote rapid economic redevelopment and reuse.

The Future of Superfund.—Superfund was originally intended to be a temporary program lasting for only a short period of time. A comprehensive reform of Superfund should result in meeting that goal. Over the next few years, this program should be targeted towards completing the cleanup of the Superfund sites remaining on the list, significantly reducing the federal involvement, and allowing states to take the primary role in the cleanup of our nation's hazardous waste sites. While the Environmental Protection Agency should continue to be involved in the emergency removal program and research and development efforts, the eventual elimination of the national priorities list should result in a system where the states, and not the federal government, determine the speed, method and order that hazardous waste sites will be cleaned up.

SECTION III—PROPOSED REFORMS

1. Community Response Organizations (CROs)

A. Creation of CROs.—Under this title, the Environmental Protection Agency (''EPA'') or applicable state (see state role below) will provide for the establishment of community response organizations (''CROs'') to provide direct, regular and meaningful consultation throughout the response action process. CROs shall be established whenever: (1) the EPA or the applicable state determines that such a group will be helpful in the cleanup process; (2) when the local government requests such an organization; (3) when 50 citizens, or at least 20 percent of the population of a locality in which the national priorities list (''NPL'') facility is located, petition for a CRO; or (4) when a representative group of potentially responsible parties (''PRPs'') request establishment of a CRO.

B. CRO Activities.—CROs should comprise a broad cross-section of the community, and its duties should include: (1) serving as a forum to assist in gathering and transmitting community concerns to the EPA, states, PRPs and other Agencies on a variety of issues related to facility remediation, including facility health studies, potential remedial alternatives, and the selection and implementation of remedial and removal action and land use; and (2) serve as a resource for

transmitting site information back to the community. CROs shall be the preferred recipients of any technical assistance grant (''TAG''), and in addition, can receive administrative assistance from the EPA and the States.

C. CRO Participants.—A CRO shall have a membership not to exceed 20 persons, who shall serve without pay. The EPA or applicable state will solicit, accept nominations and select the members of the CRO. The makeup of the CRO shall represent a broad cross section of the local community, including persons who are or historically have been adversely affected by facility contamination in their community. Local residents shall comprise no less than 50 percent of the total membership of the CRO. Membership on the CRO will represent the following groups:

1. persons residing or owning residential property near the facility or persons who may be directly affected by releases from the facility. At least one person in this group shall represent the TAG recipient if such a grant has been awarded prior to the formation of a CRO;
2. members of the local community who, although not residing or owning property near the facility, may be potentially affected by releases from the facility;
3. members of the local medical community and/or public health officials;
4. representatives of local Indian tribes or local Indian communities;
5. local representatives of citizen, environmental, or public interest groups with members residing in the community;
6. local government which may include pertinent city or county governments;
7. workers employed at the facility during facility operations;
8. facility owners;
9. representatives of potentially responsible parties, who represent, wherever practicable, a balance of PRP interests; and
10. members of the local business community.

2. Enhancing the Role of States

A. Empowering the States to List and Delist Sites.—Section 105 would be modified to provide the states with sole authority to veto the addition of any site that the EPA proposes to add to the National Priorities List. States would also be given the authority, with the concurrence of the PRPs, to have sites taken off the NPL to be managed under existing Resource Conservation and Recovery Act (''RCRA'') authorities.

B. State Delegation for NPL Sites.—States would have the option of receiving delegation for the cleanup of NPL sites on either a site-by-site or statewide basis. Under this provision, states would request the delegation of all NPL sites within their state, or they could select specific sites on a site-by-site basis, or the state could choose to assume delegation of no sites.

States that choose to take NPL sites under this delegation plan, would be required to utilize federal liability and remedy selection procedures.

States that currently have authorization for a corrective action program under RCRA, could submit a self-certificate of competence to the EPA. Such certificate shall specify whether the state seeks site-by-site or statewide delegation. The EPA would be required to grant automatic certification of these state programs.

States that do not have RCRA corrective action authority would certify that they have the financial and personnel resources, organization and expertise for carrying out the implementation of the program. Within 90 days of the submission of the state certification, the EPA would be required to review the certification and determine if the state's proposal was sufficient to run a delegated program. At the end of 90 days, if the EPA failed to state an objection to the state certification proposal, the delegation would automatically take effect.

C. Sole State Control of Delegated Sites.—Once a state receives its certification from the EPA, the state will have the exclusive authority for implementing and enforcing the federal Superfund program. Delegated states would have the sole authority for implementing the program, including, but not limited to, remedy selection, enforcement, as well as activities under CERCLA sections 104, 106 and 107. The EPA's periodic review of the state programs shall be limited to auditing the state's use of program funds and a narrow ability to decertify states that fail to materially conduct enforcement and cleanup activities.

D. State Remedy Selection.—States that are delegated Superfund authority would be required to apply cleanup standards consistent with the federal Superfund program. Any state with a delegated program could apply cleanup standards more stringent than those required under the federal program, however, the state would be required to bear the additional costs of such remedies rather than the Trust Fund or the PRPs.

E. Non-Superfund Sites.—The states would be authorized to conduct cleanup activities for all facilities that are not on the Superfund list. This would include, with the exception of the 90 sites added under this proposal, all of the sites which are currently on the Comprehensive Environmental Response, Compensation, and Liability Information System (''CERCLIS'') list.

F. Voluntary Cleanup Programs.—In addition to delegated authorities outlined above, state could also seek expedited EPA approval of state voluntary response programs. Under this provision, a state would be able to establish voluntary cleanups at hazardous waste sites with the exception of the following: (1) portions of NPL sites for which a ROD has been issued; (2) portions of sites where RCRA subtitle C plans have been submitted and closure requirements have been specified in a plan or permit; (3) portions of sites where corrective action permits or orders have been issued, modified, or amended to require specific corrective measures pursuant to RCRA sections 3004 or 3008; (4) portions of sites controlled by or to be remediated by, a department agency, or instrumentality of the executive branch of the federal government; or (5) portions of a site where assistance for response activities may be obtained pursuant to subtitle I of RCRA from the Leaking Underground Storage Tank Trust Fund.

G. State Assistance Grants.—An appropriate level of assistance grants should be provided to the states over a 3 year period to build and enhance state Superfund program capabilities. Additional block-grant funding shall also be provided for voluntary and non-CERCLA cleanups that are administered and conducted by the states.

3. National Priorities List

A. Flexible Cap.—Amend Section 105 to provide that the EPA would be allowed to add a total of thirty (30) new sites to the NPL each year for three (3) years following passage of the bill. The EPA would be required to determine and prioritize, on a national basis, which 90 sites present the greatest threat to human health and the environment. These sites would be added to the NPL only upon concurrence from the associated state (see State Role below).

B. Sunset Provision.—Three years from the enactment of this legislation, the EPA would not be authorized to add any additional sites to the NPL. At the completion of cleanup at sites remaining on the capped NPL, the EPA authority shall be limited of providing a national emergency response capability, conducting research and development, providing technical assistance, and conducting oversight of grant programs to the states.

C. Expedited Delisting.—Amend Section 105 to provide that sites shall be delisted once the construction of the selected remedy is certified as complete. An informal rulemaking shall be completed 90 days after the passage of the act outlining the process through which expedited delisting shall take place. If the implemented remedy includes institutional or engineering controls, then the EPA or the applicable state should conduct a review of the site every 5 years. Delisting shall in no way relieve the EPA or the applicable state regulators from conducting ongoing cleanup activities, monitoring or post-cleanup operations and maintenance requirements.

4. Remedy Selection

A. Enhanced Cleanup Flexibility.—Amend section 121(b) to eliminate the preferences for permanence and treatment in selecting a remedy at Superfund sites. The EPA shall be directed to consider all options for addressing contamination at a site including, containment, treatment, institutional controls, natural attenuation, or a combination of these alternatives, and select the remedy that protects human health and the environment at the lowest cost. The remedy selected shall recognize the limitations of currently available technology.

Interim containment and remediation shall be used at sites where no current technology is available to remediate sites to the containment levels necessary to protect human health and the environment. Interim remedies shall be preferred where: (1) other treatment remedies are available only at a disproportionate cost; (2) innovative treatment technologies will be available within a ''reasonable time'' (3–5 years); and (3) the threat can be contained during the interim time period. The EPA or the applicable state shall review the interim containment plan every five years after the date of construction to determine if a continued threat to human health the environment warrants a modification of the interim containment remedy.

B. Revise the ARAR Mandate.—Amend section 121(d) to eliminate the requirement that remedial actions must meet applicable, relevant and appropriate requirements (''ARARs''). Instead, allow the EPA and the applicable states to utilize remedies that are more responsive to the specific site conditions and risks.

C. Protection of Human Health.—Amend section 121 to specify that selective remedies should be protective of human health and the environment. Remedies shall be judged to be protective of the environment if they (1) protect against significant risks to ecological resources which are necessary to the sustainability of a significant or valuable ecosystem and (2) do not interfere with a sustainable functional ecosystem that is consistent with the targeted land use. The objective is protection of human health and the environment from realistic and significant risks through cost-effective and cost-effective remedies.

D. Requiring an Unbiased Risk Based Analysis.—Amend section 121 to require that risk-based decisionmaking be utilized to: (1) identify the principal elements of potential risk posed by the site, and any cumulative effects posted by adjacent NPL sites; (2) analyze the relative health and environmental benefits of alternative remedies and (3) demonstrate that the approved remedy will protect human health and environment in light

of the actual or planned future use of the land and water resources. The tools that the EPA or applicable state would be required to utilize in making this risk assessment would include:

1. actual or plausible exposure pathways based on actual or planned future use of the land and water resources (industrial, commercial, residential, etc.);

2. site-specific data shall be used in preference to default assumptions; and

3. where site-specific data are unavailable, utilize an acceptable range and distribution of realistic and plausible default assumptions regarding actual or likely human exposures and site-specific conditions, instead of high-end or worst case assumptions.

E. Planning for Future Land and Water Use.—Amend section 121(b)(1) to require EPA or the applicable state to quantify the actual or planned future use of the contaminated land and water resources based on a mix of several factors including: (1) previous use of the landholdings; (2) site analysis and surrounding land use patterns; (3) current zoning requirements and projected future land uses; and (4) input from CROs, elected municipal and county officials, local planning and zoning authorities, facility owners and potentially responsible parties. The EPA or the applicable state shall then utilize the balancing factors listed below in selecting a remedy:

F. Reasonable Remedy Selection.—Amend section 121(b)(1) to require the EPA or the applicable state to select the most effective remedy that protects human health and the environment, unless the remedy is technically infeasible or the incremental costs are not reasonably related to the incremental benefits. The following balancing factors should be utilized in determining the most sensible, cost effective remedy:

1. the effectiveness of the remedy to protect human health and the environment;

2. reliability of the remedy to protect human health and the environment over the long-term;

3. any short-term risks posed by implementation of the remedy to the affected community, and to remediation workers;

4. the relative implementability and technical feasibility of the remedy; and

5. acceptability of the remedy to the affected community.

G. Establishing Reasonable Groundwater Cleanup Strategies.—Section 121 should be amended to require that remedy selection for groundwater should include a consideration of the current and future use of the resource, including both the nature and timing of uses. The remedy selection should consider a range of possible remedies including pump and treat, point of use treatment, containment and natural attenuation. The application of the possible remedies shall be weighed against the balancing factors outlined in section F (above) to determine the most cost effective remedy that protects human health and the environment that is not technically infeasible or where the incremental costs are not reasonably related to the incremental benefits. The type and timing of the resource use, technical feasibility and reasonableness of cost shall also be considered where the contamination threatens uncontaminated, usable groundwater.

H. Enhancing Emergency Response.—Amend section 104 to increase the duration of Emergency Response actions to 24 months, and increase the authorized cap to $4 million per site. Provide increased flexibility to emergency response managers to conduct removal and cleanup activities beyond the currently authorized level, where such action may significantly reduce or eliminate the necessity for further remedial activities at such a site.

I. Reviewing Past Remedy Decisions.—At sites where a record of decision (''ROD'') has not been signed, the EPA or the applicable state shall apply the remedy cleanup provisions contained within this bill. At sites where a ROD has been signed, but where construction has not begun, the EPA, the applicable state or the PRP can request a review of the ROD to determine if the remedy reform changes contained within the bill would result in a lower cost remedy that protects human health and the environment than the one being proposed. At sites where construction has begun, or where construction has been completed, the EPA or applicable state may conduct and implement a modification of the ROD where the EPA or applicable state or the RPR can demonstrate that the changes in remedy selection contained in the bill would result in a total life cycle cost reduction of at least 10 percent. Under no circumstances could a review of a ROD result in the selection of more costly remedies, nor would there be any reimbursement for past costs. Appropriate limitations would be placed on this review process to limit the potential for additional litigation.

5. Liability Standards

A. Repeal Retroactive Liability for Pre-1981 Disposal.—Amend section 107 to provide that no person shall be held liable for the removal or response costs related to hazardous substance disposal at non-federal NPL sites that occurred prior to December 11, 1980. Such costs shall be paid from the Hazardous Substance Superfund (''the Fund''). For those sites where disposal occurred both prior to and after December 11, 1980, the fund would utilize an independent allocator who would apportion the liability for this pre- and post-1980 disposal. Such allocator would also determine the proportionate level of liability for post-1980 disposal as is described below. Retroactive liability repeal would not apply to federal liability that occurred at nonfederal facility NPL sites. This retroactive repeal program would include a mechanism to ensure that PRPs remain on the site to conduct the cleanup program.

The fund would also assume the costs of any ongoing operations and maintenance costs (''O&M) for the proportionate level of pre-1981 disposal activities. The independent allocation process mentioned earlier would also determine the level of pre- and post-1980 liability for ongoing O&M for any facilities that were in construction or had completed construction prior to the passage of this act.

The fund would also assume that proportionate level of liability for pre-1981 disposal activities at those facilities where construction was underway at the time of the act, but where the payment for that construction had not been completed. In addition, the fund shall reimburse PRPs for construction payments made after June 15, 1995, where such activity was incurred to address pre-1981 liability. At PRP led sites, the PRP shall remain responsible for conducting cleanup activities, but shall be reimbursed from the fund consistent with the principles outlined above.

B. Proportionate Liability for Post-1980 Disposal.—Section 107 would be amended to create a proportionate liability scheme for removal costs, response costs and NRD at non-federal facilities at which hazardous substances were released. Such proportionate liability system would utilize an independent allocator that would determine the appropriate level of liability of each party currently liable under section 107(a) of the existing law.

No person shall be held liable for more than the share of removal, response or natural resource damage (''NRD'') costs attributable to that person's conduct. In determining the person's proportionate share of liability, the following factors shall be considered: (1) the amount of hazardous substances contributed by each party; (2) the toxicity of the hazardous substances involved; (3) the mobility the materials; (4) the degree of involvement of each party in the generation, transportation, treatment, storage, or disposal of the hazardous substances; (5) the degree of care exercised, taking into account the hazards posed by the material; (6) the degree of cooperation with federal, state and local officials; and (7) any other equitable factors as the allocator determines are appropriate.

At non-federal sites, the fund shall pay the costs of ''orphan shares,'' which shall be defined to include the shares attributed to bankrupt or dissolved parties, as well as shares that cannot be attributed to any party due to insufficient proof. Any PRP unwilling to pay its allocated share can be sued by EPA for all unrecovered costs at the site, including any orphan shares and de micromis shares. Thus, non-settlors may be held liable for the orphan shares and de micromis shares in addition to their own shares. Settling parties would receive complete contribution protection.

C. De Micromis Disposal Exclusion.—Amend section 107 to provide an exception from liability for certain parties who arranged for, or accepted for, disposal, treatment, or transport of municipal solid waste which contained not more than 110 gallons of liquid materials containing hazardous waste, or not more than 200 pounds of solid materials containing hazardous waste.

D. Lender Liability.—Amend CERCLA to limit the liability of lenders or lessors that: acquire property through foreclosure; hold a security interest in the property; hold property as a lessor pursuant to an extension of credit; or exercise financial control pursuant to the terms of an extension of credit. This section would limit the lenders potential liability to the gain in property value resulting from another party's response action to a release or threatened release. A lender would still be liable if it had caused the damage, release or threat.

1. Fiduciary Activities.—The liability of fiduciaries would be limited to the excess of the assets held in the fiduciary capacity that are available for indemnity. Nonetheless, fiduciaries may be held liable for failure to exercise due care which causes or contributes to the release of hazardous materials. In addition, a fiduciary could be held liable for independent actions taken or ownership of properties unrelated to their fiduciary capacity.

2. Owner Operator Definition.—Amend section 101(20) Superfund to provide that the term owner or operator does not include a person who does not participate in management but holds indicia of ownership to protect the security interests of others, nor does it include a person who does not participate in management of the facility prior to foreclosure.

3. Participation in Management.—Amend section 101(20) of Superfund to provide that ''participation in management'' means actually participating in the management or operation affairs of a vessel or facility, and does not include merely having the capacity to influence, or the unexercised right to control, vessel of facility operations.

E. Response Action Contractor Liability.—(''RACs'') Amend section 119 of the Act to provide a negligence standard for activities undertaken by RACs. In addition, amend section 101(2) to provide that ''owner and operator'' does not include in persons performing on written contracts to provide response action activities.

F. Other Small Business Liability.—There are a variety of other CERCLA liability concerns that have been raised by small business that have not been outlined in this legislative specifications paper. Nonetheless, such concerns are intended to be addressed within the context of a comprehensive CERCLA reform measure.

6. Federal Facilities

A. Enhanced State Delegation.—Qualified states could be delegated CERCLA authority at Federally owned or Federally operated facilities, consistent with certification requirements described above.

Delegation would be contingent upon: (1) states applying identical clean up standards and processes at Federal sites as are applied to non-Federal sites, (2) allowing uncontaminated or cleaned up parcels of property to be reused as rapidly as possible, and (3) applying a definition of uncontaminated property that includes property where hazardous materials were stored but not released.

The Department of Energy's Defense Nuclear Facilities where the federal government is the sole PRP would remain under the jurisdiction of the EPA. In addition, a limited number of Department of Defense sites with exceedingly complex environmental contamination would also remain under the jurisdiction of the EPA.

A risk-based prioritization processes, consistent with remedy selection criteria described above, will be utilized to rank proposed actions at federal facility operable units. Existing Federal Facility Compliance Agreements would be renegotiated based on the identified priorities. These agreements would form the basis by which federal facilities would be regulated by the EPA or the applicable states.

B. Clarifying Radionuclide Regulation.—A minimum standard for radionuclides would be established. Such standard would also account for naturally occurring radioactive materials (''NORM'').

C. Promoting Innovative Technology.—The use of Federal facilities to encourage and promote innovative cleanup technology that can be used at Superfund sites would be authorized. EPA would be required to develop an expedited permitting process to collect cost and performance data on new characterization, cleanup and waste management approaches.

7. Natural Resource Damages

A. Recoverable Damages.—Amend section 107 to provide that natural resource damages shall only be recoverable for actual injury to measurable, and ecologically significant functions of the environment that were committed to allocated to public use at the time of the conduct giving rise to the damage. The recovery shall be limited to the reasonable cost of restoring, rehabilitating or acquiring a substitute or alternative resource as well as the cost of assessing damages to that resource. With the exception of direct monetary damages resulting from a lost use of the natural resource, there shall be no recovery for lost use or non-use damages.

B. *Liability Cap*.—Amend section 107 to clarify that no natural resource damage liability shall result from activities where the release or releases of hazardous substances occurred prior to 1980. Where the placement of hazardous materials occurred prior to 1980, but where additional releases resulting from that placement occurred after 1980, the PRP shall be liable for post-1980 releases with a total potential liability not to exceed 50 percent of the amount spent on remedial action. Where the placement of materials occurred both before and after 1980, and where the release or releases of hazardous substances occurred after 1980, the total potential liability of the PRP shall not exceed 75 percent of the amount spent on remedial action. Where the placement and release of the hazardous materials occurred wholly after 1980, the total potential liability of the PRP shall not exceed 100 percent of the amount spent on medial action.

C. *Evidentiary Standard*.—Amend section 107 to eliminate the rebuttable presumption in favor of trustee assessments for any natural resource damages claim in excess of $2 million. For all claims in excess of $2 million, the trustee shall establish all elements of the NRD claim by a preponderance of the evidence, which shall be reviewed de novo by a court, upon petition of any party who is potentially liable for NRD at the site.

D. *Natural Recovery*.—Amend section 107 to require that trustees shall give equal consideration to actions that promote the use of natural recovery as an acceptable alternative to replicating the precise physical, chemical, and biological properties of resources prior to injury.

E. *Cost Considerations*.—Amend section 107 to require that restoration alternatives should include a consideration of the most cost effective method of achieving the restoration objective (i.e., the restoration, replacement or acquisition of ecologically significant resource functions) and not solely the replication of the resource.

F. *Cleanup Consistency*.—Amend section 107 to require that the NRD restoration standards and restoration alternatives selected by a trustee shall not be duplicative of, or inconsistent with, actions undertaken pursuant to sections 104, 106 and 121 of the act. In addition, trustees should be involved early in the remedy selection process to ensure consistency between resource restoration and cleanup activities.

G. *Double Recovery*.—Amend section 107(f) to provide that there shall be no recovery for NRD under Section 107 if compensation has already been provided pursuant to CERCLA or any other federal or state law.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana, [Mr. JOHNSTON] is recognized.

Mr. JOHNSTON. I ask unanimous consent that the pending amendment be agreed to and that a motion to reconsider be laid on the table.

The PRESIDING OFFICER. Is there objection?

The Senator from New Mexico.

Mr. JOHNSTON. Was that reached, Mr. President?

The PRESIDING OFFICER. Does the Senator from New Mexico object?

Mr. DOLE. No.

The PRESIDING OFFICER. Without objection, it is so ordered.

So the amendment (No. 1517) was agreed to.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I ask unanimous consent to address the Senate as in morning business for 10 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. LAUTENBERG. Reserving the right to object.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. I would ask the Senator from Arizona how long he would like to take. We have an amendment that is pending.

Mr. MCCAIN. If there is a pending amendment and the managers are interested in moving forward, I will withdraw that unanimous-consent request, if it is the will of the Senate.

Mr. DOMENICI. Mr. President, I understand there is no amendment pending; is that correct?

The PRESIDING OFFICER. That is the Chair's understanding.

Mr. LAUTENBERG. The Senator from New Mexico is right.

Mr. DOMENICI. Mr. President, I wonder if the Senator will let me send an amendment to the desk, and then I will be glad to yield 10 minutes to him.

AMENDMENT NO. 1533 TO AMENDMENT NO. 1487

(Purpose: To facilitate small business involvement in the regulatory development process, and for other purposes)

Mr. DOMENICI. Mr. President, I send an amendment to the desk on behalf of myself, Senator BINGAMAN, and Senator BOND and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI], for himself, Mr. BOND, and Mr. BINGAMAN, proposes an amendment numbered 1533 to amendment No. 1487.

Mr. DOMENICI. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. JOHNSTON. Will the Senator yield for a unanimous-consent request?

Mr. DOMENICI. Absolutely.

Mr. JOHNSTON. Mr. President, I have cleared this request with Senator LAUTENBERG and with Senator LOTT.

I ask unanimous consent that when an amendment by Senator LAUTENBERG, which deletes the language of the toxic release inventory, is considered, that there be 1 hour evenly divided; that no second-degree amendments be in order; and that there be a vote up or down on the amendment.

The PRESIDING OFFICER. Is there objection?

Mr. NICKLES. I object.

The PRESIDING OFFICER. Objection has been heard.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico still has the floor.

Mr. DOMENICI. I yield to Senator MCCAIN 10 minutes, if the Senate will permit me to do that.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. I ask unanimous consent that I be permitted to yield 10 minutes, and when he finishes, the floor be returned to the Senator from New Mexico to debate the pending amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Arizona.

Mr. GLENN. Will the Senator yield?

Mr. MCCAIN. I have the floor. I will be glad to yield.

Mr. GLENN. I want to ask a question of Senator DOMENICI. Would he be willing to enter into a time agreement?

Mr. DOLE. Will there be any second-degree amendments on Domenici?

Mr. DOMENICI. Let me say to Senator LEVIN, this has nothing to do with toxic matters, nothing to do with that part.

Mr. DOLE. Mr. President, if the Senator from Arizona will yield to me a moment, we would like to get a time agreement on the Domenici amendment and then whatever we work out on the Lautenberg amendment. We would like to have a window of opportunity from 7 until 8 where there will be no votes. So if we can have one vote before 7, and then any other votes will be after 8 o'clock. Maybe we can work that out during the 10 minutes.

Mr. BYRD. Will the Senator yield?

The PRESIDING OFFICER. The Senator from Arizona has the floor.

Mr. MCCAIN. I will be glad to yield to the Senator from West Virginia.

Mr. BYRD. I wanted to ask the distinguished majority leader why we could not just work ahead and not have a window of opportunity?

Mr. DOLE. You mean work right on through?

Mr. BYRD. Yes.

Mr. DOLE. We will both be here. That will be all right with me. I think it is going to work out that way. I do not know how much time the Senator from New Jersey would want. If we reach an agreement, I think it is going to be about an hour on each amendment. I am perfectly willing to continue to operate without any window, but a number of my colleagues have obligations away from the Capitol. Obviously, the important thing is to finish the bill. That is the most important thing.

Mr. BYRD. Mr. President, will the distinguished majority leader yield?

Mr. MCCAIN. I yield to the Senator.

Mr. BYRD. Without the time being charged to the distinguished Senator from Arizona, without his losing his right to the floor.

I can understand the desire of Senators to have a window, but there are some of us who understand that we have to stay here. We do not have any obligations away from the Hill. I have a wife and my little dog, Billy, at home. I would like to get home a little more often a little earlier. These windows of opportunities keep us here, those of us who are willing to, they keep us here in order to accommodate a few who want to run hither, thither, and yon, perhaps for good reason. But it delays the rest of us from getting the work done and getting home.

At the same time when we have these windows of opportunities, who stays around here and listens to the Senators talk? This is a poor way to do business. I do not say this critically of the majority leader, because I have been the leader on previous occasions. I just hope we would not fall into a habit here of having these windows of opportunities and keeping others here who are willing to stay here and work and get home and know what is being said by Senators who take the floor for debate.

Mr. DOLE. I appreciate the comments of the Senator from West Virginia, my friend. I think someone said 2 hours would do. I said, no, an hour should be adequate. Maybe that will not happen. Obviously, the important thing is to finish this bill. I think we have made some progress here, hopefully, this afternoon. If we can have time agreements, if they are less than an hour, there will be less than an hour window. I will work with the Senator from West Virginia. My little dog, Leader, misses me and your old dog Billy, we have not gotten them together yet.

Mr. JOHNSTON. Mr. President, if the leader will yield, Senator LAUTENBERG has a request for a 1-hour time agreement. That would be a good 1-hour window right there.

Mr. HATCH. Will Senator DOLE under the same unanimous consent agree to another comment? Will the leader yield? We also have Senator FEINGOLD. I just want to get it out so people know how many possible votes we have. Senator FEINGOLD has an amendment. We have a couple of other Senators who may want to bring up amendments tonight.

Mr. GLENN. Senator PRYOR has one also.

Mr. PRYOR. Mr. President, I have one.

The PRESIDING OFFICER. The Senator from Arizona has the floor.

Mr. HATCH. I just want everybody to be aware.

Mr. DOLE. If the Senator from Arizona will yield to me one additional moment.

Mr. GLENN. Could I have 20 seconds here? All of these agreements on who is going to come up with whatever, all the agreements on time are going to be contingent on not having second-degree amendments. I think we can work out time agreements or an agreement not to have second-degree amendments.

Mr. DOLE. I cannot speak for anybody on that. I do not have any amendments. Others on either side may wish to reserve that right. It is my understanding the other side cannot agree to any vote before 7:15. Somebody on that side must already be out the window.

So we would be happy to try to work it out. We can have two votes at 8 o'clock. If we can get agreements on the Domenici and Lautenberg amendments, we can do it at 8 o'clock.

Mr. GLENN. Senator LAUTENBERG can accept a time agreement, but not if there is restriction on second-degrees.

Mr. DOLE. As I understand it, we cannot give that assurance.

Mr. GLENN. OK. So there will not be any time agreement.

Mr. DOLE. What about Domenici, is that subject to second-degree?

Mr. GLENN. We are still going through Domenici to see what is in it.

Mr. DOLE. Why do we not let Senator MCCAIN proceed? I think he has a very important statement.

The PRESIDING OFFICER. The Senator from Arizona has the floor.

ATROCITIES IN BOSNIA

Mr. MCCAIN. Mr. President, I do not know how many of my colleagues saw the picture on the front page of the New York Times this morning. It is an unusual and historic picture. When you first look at it, all you see is a group of refugees. If you look a little closer, you will see men in military uniform. Those men are part of what has been called the U.N. Protection Force. They are standing by observing men being taken out of Srebrenica who are suspected, by Bosnian Serb forces of ''war crimes,'' young women being taken out for purposes that I cannot describe, old women and children who are starving to death and being forced to walk unknown distances.

Rather than describe it in my words, let me just read:

> In what has been a ritual of previous ''ethnic cleansing'' campaigns by the Bosnian Serbs to rid territories of Muslim populations, the Serbs who took Srebrenica separated the military-age men from the refugees and said they would be ''screened for war crimes,'' a United Nations spokesman here said. The air was filled with anguished cries as the Bosnian Serbs loaded the first 3,000 women, children and elderly . . .

Mr. President, we have gone from a situation where the Europeans were supposed to be protecting people to now sitting by and watching atrocities and war crimes being perpetrated before their very eyes. And they stand by helpless. What could possibly be the effect throughout the world of scenes such as this?

Mr. President, as Senator DOLE said in his recent statement, it is over. It is over, Mr. President.

''It was quite a horrifying scene,'' said Steven Oberreit of Doctors Without Borders. ''There was screaming and crying and panic. They didn't know where they were being taken to.''

> The refugees fled to Potocari on Tuesday night after Bosnian Serb troops swept into the town of Srebrenica, the heart of the United Nations safe area . . .
>
> Today, 1,500 Bosnian Serb troops, backed by tanks . . . overran the base with no resistance after they threatened to shell the refugees and kill the Dutch peacekeepers they were holding hostage if NATO warplanes intervened.

Mr. President, we have crossed the line from danger to humiliation. We have crossed the line from attempts to do the right thing to degradation and dishonor.

Mr. President, we cannot allow this to continue. And if events follow unchecked, next will be the enclave of Zepa, and then Gorazde, and next

maybe even Sarajevo. Mr. President, it is time they got out, and it is time we helped them out, and it is time we help the Bosnian Muslims defend themselves.

Mr. BIDEN. Will the Senator yield for an observation?

Mr. MCCAIN. Yes.

Mr. BIDEN. Mr. President, I am glad to hear the Senator on the floor speaking to this. Would the Senator acknowledge what everybody forgets? I know the Senator is angry about it, as well. I want to remind everybody that the reason why the U.N. observers are there is that the United Nations went in and disarmed—disarmed—not only did we fail to allow the Bosnian Government to get arms, the arms that existed, we went into Srebrenica—the United Nations did, with our support—and disarmed the Bosnian Government, disarmed the Muslims, disarmed the Croats, in return for a promise that we would protect them. And when, in fact, it was clear and the Dutch were called in for air strikes by NATO, Mr. Akashi said no.

I want everybody to remember what the Senator from Arizona is saying here. Not only did we not protect, we affirmatively—the United Nations and the West—disarmed those safe areas, took their weapons and said, ''We promise you in return that we will keep the Serbs from the door.'' But they knocked on the door, knocked it down, and there was nothing there for them to defend themselves with.

Now, as the Senator from Arizona said, they stand by and watch. And it is not the fault of those Dutch blue helmets. It is the fault of the contact group. It is the fault of the West for failing to intervene, at a minimum with air power, significant air power. But I think the Senator is absolutely correct. This is an atrocity. We should lift the embargo immediately and we should make available what, under the law, the President is allowed to do.

Two years ago, this Senate and Congress passed a piece of legislation authorizing the President, in his discretion, to make available up to 50 million dollars worth of weapons off the shelf now for those people.

I stood in Tuzla the last time this happened and watched trucks come into Tuzla loaded with women and children, and I thought they were celebrating when I first saw them because they were holding up children in these dump trucks above their heads. As they unloaded the dump trucks, I understood why the children were being held above their heads and held outside of the dump truck. Do you know why, Mr. President? Because when they opened the gate and got out, there were three children smothered to death in the bottom of those 1995 versions of cattle cars being dragged into Auschwitz. If these were not Moslems, the world would be reacting, just like if it were not Jews in the thirties, the world would react. Shame on the West.

Mr. MCCAIN. Mr. President, I ask unanimous consent that I be granted an additional 5 minutes.

The PRESIDING OFFICER (Mr. BENNETT). Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, I appreciate the emotion of my friend from Delaware. I appreciate his compassion. I think the challenge before us now is to try to devise, working with the administration, a way to end this tragedy as quickly as possible for a minimum loss of human life, recognizing at this point that there are no good options. There are no good options in Bosnia today. What we need to do is choose the least bad option if we expect to stop this ongoing tragedy.

The reason I pointed out this picture again—this is the first time, I think, in history we have ever seen a picture of people who are in uniform, designated as peacekeepers, standing by and watching people being ethnically cleansed, mass rape, and, of course, the arrest and probable torture of young men. That is what the U.N. Protection Force has been reduced to. That is why, in my view, this was ill-conceived and flawed from the beginning—because it was an attempt to keep peace where there was no peace.

I wanted to give some facts as to how bad the situation is. Let me point out that I believe the United States should be prepared to assist in the effort to help remove the United Nations protection force and remove U.N. and allied forces from Bosnia. I want to just lay out the criteria. I hope at some time we can have a significant debate and discussion of this issue, possibly as early as next week. But I want to lay out the following criteria, because we have to be clear.

The operation must be conducted under U.S. or NATO command. It must have a clear mission objective, precluding any danger of mission creep, and the operational rules of engagement must be established and approved by NATO. Under no circumstances should the United Nations be permitted to participate in any way in the planning or implementation of a withdrawal operation. To allow any U.N. influence would be to risk the same failed policies from which UNPROFOR so clearly suffers. To allow U.N. participation in command decisions would be to risk repeating the gutless refusal to destroy Serb air defenses, a U.N. decision which led to the shootdown of an American F–16 last month.

Mr. President, the administration has committed 25,000 U.S. forces as part of an evacuation force. Once again, we must recognize that we must be willing to devote whatever forces in support that are necessary to successfully complete the mission—an overwhelming force to guarantee the safety of our men and women in uniform and those of our allies.

Finally, Mr. President, clear warnings must be issued to all parties involved in the Bosnian conflict. Should one American be injured or killed while participating in a withdrawal operation, the United States will not hesitate to use its military might to punish such aggression.

I would like to be specific. If the Bosnian Serbs harm Americans while this rescue operation is going on, I suggest the most punishing air strikes imaginable, and going as far away as Belgrade, if necessary.

Mr. President, it is our obligation morally to rescue the U.N. Protection Forces. It is also our moral obligation to do everything necessary to protect the lives of our young men and women who are involved in that operation, and make the cost so extremely high that we can guarantee to a significant degree the safety of those men and women.

Every day UNPROFOR stays, every hostage that is taken, every attack on the safe areas, every strategically ineffectual air strike and every sortie that has no mission but returns safely to base, creates the perception of a feeble Western alliance.

Every day UNPROFOR is in place is another day that the Bosnian Government forces are precluded from protecting themselves against Serb aggression. Remove UNPROFOR, lift the arms embargo and allow the people of Bosnia to fight for their future.

Unfortunately, harsh, cold, military facts will resolve this conflict. One side will prevail. I hope it is the lawful government of Bosnia. I find it very troubling that we have interfered with these realities to the benefit of the aggressor, by imposing an arms embargo on the victim. If we are unwilling to commit American forces to defend Bosnians, we cannot in good faith prevent the Bosnians from defending themselves.

I want to thank Senator DOLE for his proposal on this issue. I hope that next week we will take up this issue as soon as possible. Every hour that we delay, more innocent people will die. Every hour that we delay, will mean more humiliation and degradation of the United Nations and NATO. The repercussions of this kind of dishonor will reverberate around the world. We must bring it to a halt.

I appreciate the indulgence of my colleagues.

Mr. DOLE. Mr. President, first let me commend my colleague from Arizona for his eloquent statement and my colleague from Delaware, Senator BIDEN. I certainly share the views they both expressed this evening.

This is a tragedy I do not believe we will be able to measure for a long, long time. It will have an impact on the West for decades. I hope we can take up the Bosnia resolution as early as next Wednesday or Tuesday.

COMPREHENSIVE REGULATORY REFORM ACT

The Senate continued with the consideration of the bill.

Mr. DOLE. Mr. President, we are trying to get some order so Members will know precisely what will happen.

As I understand, Senator DOMENICI is prepared to offer an amendment, and he is prepared to enter into a time agreement. That cannot be done until Senator GLENN has an opportunity to look at the amendment. We are not certain whether or not there will be a second-degree amendment.

I am advised that we can now deal with the Lautenberg amendment without a second-degree amendment, and it will be 1 hour equally divided.

I ask unanimous consent when Senator LAUTENBERG offers his amendment, No. 1535, that no amendments be in order, that there be 1 hour for debate to be equally divided in the usual form, and when the Senate votes, the vote occur on or in relation to the Lautenberg amendment.

Mr. WARNER. Reserving the right to object, I shall not object. Is it possible we could set a precise time on the Lautenberg vote?

Mr. DOLE. That is what we are trying to work out. We will not take up the Lautenberg amendment, I assume, for another 20 minutes, so the vote will not come until the end of that hour.

We hope we get an agreement on the Domenici amendment, also on the Feingold amendment, and also on an amendment by Senator PRYOR.

We are looking at the Feingold amendment. We did not have a copy of Senator PRYOR's amendment.

If we can start getting these agreements, I can advise my colleagues when we will have the vote.

Mr. DASCHLE. Mr. President, reserving the right to object, I guess I am not clear.

The majority leader, then, would not be prepared to set a time for the vote on the Lautenberg amendment until we know whether we can sequence more amendments and determine from that whether we might be able to sequence, then, the votes following consideration of all the amendments.

Mr. DOLE. That is correct. There have been a couple of suggestions made. One, that we can sequence four or five amendments and have all the votes tomorrow morning.

We would be here this evening debating the amendments, and those who had other plans or just wanted to frankly do something else, that they would be free to do that this evening. We would have votes tomorrow morning.

I think that is what we are trying to put together. There are four amendments we are aware of. I think the Senator from Texas, Senator HUTCHISON, has an amendment. We are trying to contact her.

I think fairly soon we will have the Glenn amendment, the big amendment, the substitute amendment, which I assume will probably take some time to debate on that.

Mr. KENNEDY. Mr. Leader, I have one on the OSHA provisions, and I would be glad to enter into a time limit tomorrow if we are sequencing. I would be glad to be in touch with the floor manager staff. We will make a copy available.

Mr. LEVIN. Will the leader yield?

Mr. DOLE. I am happy to yield to the Senator.

Mr. LEVIN. There are many amendments that are outstanding. I just am wondering whether or not the majority leader was suggesting that there was just that limited few amendments that were still outstanding, because there are many, many.

Mr. DOLE. I hope the number is not too large. I know there are a number of amendments.

Mr. PRYOR. If the distinguished majority leader would yield, I have an amendment. I think it could possibly even be accepted by both sides. I am not certain.

Even if it has to be debated and voted on, I would agree to 30 minutes time, 15 minutes equally divided, sometime tomorrow, and no second-degree amendments to be offered.

Mr. DOLE. As I understand, we have a copy of that amendment, and I will have Senator HATCH and Senator ROTH look at it.

I would hope that even if we reach some agreements that Members with amendments would stay tonight and try to dispose of those amendments. They may be acceptable or reaching some agreement, where we could have the vote, if not tonight, sometime tomorrow morning.

I think there is good-faith effort on the part of the leaders to keep this bill moving. I think we have gone over a couple of large hurdles this afternoon. If we can make some progress this evening, even though there might not be any votes after a certain point, we could still stay here. The managers are anxious to be here late tonight, to deal with amendments.

Mr. DASCHLE. If the majority leader would yield, would it not be in the interest, for the benefit of those who are waiting to offer amendments, to at least provide a sequence? We have Senator DOMENICI prepared to go now, and then Senator LAUTENBERG immediately after that. If it would be appropriate then for Senator FEINGOLD and Senator PRYOR to follow Senator LAUTENBERG —if we know the sequence perhaps we could then——

Mr. DOLE. I make that request.

Mr. DOMENICI. Reserving the right to object, what we intend to do is to speak for 20 minutes on our side on this Domenici amendment, giving your side a chance to look at it.

We will yield the floor and then permit going to Senator LAUTENBERG. That hour will elapse and then by that time your staff can have looked at ours, we will come back to it and finish it—whether it is 10 minutes, 20 minutes—and then of course you can go to the next one.

So that is understood as the sequencing for the conclusion of the Domenici amendment.

Mr. DASCHLE. That was my understanding, that we were going to set aside the Domenici amendment in order to accommodate the other amendments, and come back to the Domenici amendment after we had a chance to look at it.

Mr. DOLE. Following the Pryor amendment, the amendment by Senator HUTCHISON, an amendment on reasonable reliance.

If I could renew that request, that following the debate by Senator DOMENICI, 20 minutes, we then move to the Lautenberg amendment, and after completion of debate on the Lautenberg amendment, be followed by debate on the Feingold amendment, to be followed by debate on the Pryor amendment, to be followed by debate on the Hutchison amendment.

Mr. DASCHLE. If the majority leader would yield, I am informed Senator FEINGOLD has a second amendment very similar in nature to the Pryor amendment that he would be willing to accept a short time agreement on, so if we could put that on the list as well, I think that could accommodate Senator FEINGOLD.

Mr. DOLE. And that he would follow the Hutchison amendment; is that all right?

Mr. DASCHLE. That is correct.

Mr. JOHNSTON. Mr. President, reserving the right to object, were there any—did this ask for no second degrees on any of those amendments?

Mr. DOLE. Not at this point. We are trying to get the sequence. If we cannot agree on second degrees, that will present a problem. We are at least trying to sequence amendments so Senators will know when they may be expected to be here to offer their amendments, and obviously we would like to have additional amendments if anybody has an amendment. The Senator from Massachusetts will do his, I understand, tomorrow?

Mr. KENNEDY. I would prefer that.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. Reserving the right to object, technically you did not say upon completion of Lautenberg we would return to Domenici before we go to the next amendment, and that should be there.

Mr. DOLE. I thought I did.

Mr. DOMENICI. You did not.

Mr. DOLE. Did not. All right. I guess I could not remember your name.

Mr. DOMENICI. It is pretty hard.

Mr. BYRD. Reserving the right to object—I have no intention of objecting—may I ask, is it the intention to vote on all these amendments this evening? As I understand it, we are only sequencing the amendments now. Some of them may be played out on tomorrow?

Mr. DOLE. That is correct. Some may be accepted, as I understand it. Some may need rollcall votes.

Mr. BYRD. And some might go over to tomorrow.

Mr. DOLE. Some might go over. I am not quite ready to announce that, but I

agree with the Senator from West Virginia, we are going to take them up. We can either vote as they come up or we can stack the votes, if that is satisfactory.

Mr. BYRD. Mr. President, I can understand the necessity for stacking a few votes, but I would object to stacking a great number of votes.

What do we mean by a great number?

Mr. DOLE. Right. I would say two or three—that is a small number.

Mr. BYRD. Yes. I have no problem with two or three. But I think we ought not to stack a great number of amendments.

Mr. DOLE. If we did, we would check with the Senator from West Virginia and provide for a little debate between each.

Mr. BYRD. That is all right up to, say, three.

Mr. DOLE. But if we decided to do three this evening and the balance tomorrow morning, would that be satisfactory?

Mr. BYRD. I have no problem with three votes. I hope we will stay here and do them. But there are many of us that sacrifice a great deal in order that one or two Senators, on this side of the aisle and on that side of the aisle, keep an engagement off the Hill. The rest of us are pinned down here waiting on action. We sit here for an hour or 2 hours before we get a vote.

I am not attempting to get in the majority leader's way or the minority leader's way. I am not attempting to force my will on the Senate. But I am one Senator who sits here and waits on action that does not accommodate me at this hour of the evening, to stack votes, hold off votes, or to have a window. There are a lot of other Senators here who would rather be home with their spouses than to be sitting around waiting on a window to expire so we can get down to business to accommodate one or two Senators.

Mr. DOLE. I understand. I hope this will work to everyone's satisfaction. We will keep that in mind.

Mr. BYRD. I thank the majority leader.

Mr. NICKLES. Will the majority leader yield?

Mr. DOLE. I will be happy to yield.

Mr. NICKLES. For the information of my colleagues, I was the one who requested that we stack the vote and maybe several votes for tomorrow morning. The reason I was doing that is because a lot of us do have families and would like to have dinner with their families. I cannot do that tonight because I am involved with some of these amendments, so I am not speaking for myself, but I know a lot of colleagues—some of our colleagues do not live real close to the Hill, either. They might live 20 miles away, so they cannot really wait for 2 hours.

So it is my suggestion that we do as many amendments as possible. Maybe some of these amendments—we now have an order for five amendments. It may well be that we can accept two or three of these amendments without rollcall votes. In all likelihood, the Lautenberg amendment will require a vote. I am not sure about the Feingold amendment or the Pryor amendment. Maybe we can accept the Pryor amendment.

I would like to see us make as much progress as possible. We have a lot of work to do. I also hope the majority leader will say that this is not the end of the work tonight.

I hope we plow ahead, because I know people said they have amendments and I know we are running out of days. So I hope the leaders and the managers of the bill will be willing to stay in and work through as many amendments as possible and stack whatever rollcalls are necessary until possibly 9 o'clock tomorrow morning.

Mr. JOHNSTON. Will the Senator yield?

Mr. NICKLES. I will be happy to yield.

Mr. DOLE. Let me respond. I do not disagree with the Senator from Oklahoma or anybody else. I think we all have the same objective and that is to try to finish the bill. As long as we are moving. What we do not want to do is sit around and wait for somebody to come back from somewhere, so 80 of us wait for 5 to come back. I have done that before, as the Senator from West Virginia has. But I think we have a sequence now and we have the people here who will be here and be debating these amendments. I think for the next hour and a half, we are going to have total debate without, probably, a single quorum call. I think that should satisfy everyone.

Mr. JOHNSTON. Mr. President, will the Senator yield?

Mr. DOLE. This is the late night, I might add. Thursday is normally the late night. We are going to continue.

Mr. JOHNSTON. I think we have a good chance of being able to work out some of these without a record vote. We have some changes I think we can work out with Senator DOMENICI and then, at least from my standpoint, that would probably not require a record vote.

Senator PRYOR's amendment does not sound as though it would require a record vote. At least, speaking for myself, it sounds reasonably noncontroversial.

Mr. PRYOR. Fine.

Mr. JOHNSTON. So you have—that is five. If two of them do not require record votes, that is a maximum of three, and we could let our colleagues go home and see their dog Billys.

Mr. DOLE. I think the best thing we can do now is start the debate.

Mr. GLENN. Will the majority leader yield for a question? As I understood this, and so we straighten it out—I checked with the Parliamentarian a moment ago. I think there was a little doubt as to the order here. As I understood it, it was this: Domenici, 20 minutes; Lautenberg; back to Domenici, then at the end of that; then Feingold, Pryor, Hutchison, back to Feingold again, and Kennedy tomorrow probably; is that correct?

Mr. DASCHLE. That is correct.

Mr. DOLE. Unless we can finish this evening. I think we will probably be on it tomorrow.

The PRESIDING OFFICER. Is there objection to the majority leader's request? Hearing none, it is so ordered.

Under the previous order, the Senator from New Mexico is recognized.

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, it is my understanding I have 20 minutes to be used as I see fit; is that correct?

The PRESIDING OFFICER. That is correct.

AMENDMENT NO. 1533

Mr. DOMENICI. Mr. President, this amendment is made up of two parts. The second part is an amendment proposed by the chairman of the Small Business Committee, who is present on the floor, Senator BOND. So I will try to divide the time rather equally, using 10 minutes and yielding 10 to him—maybe a little more on my end, in proportion. There are more words in my amendment than his, which probably means I should talk a little longer.

I am glad the Senator finished. I yielded 40 minutes ago, I thought, and we would have already been finished with me, but we got a lot of work done so I am pleased to have yielded.

Mr. President, I sent this amendment to the desk in behalf of Senator BINGAMAN, Senator BOND, and myself. I think all of us have had experience in our home States, in one way or another, talking to a lot of small business people, men and women, sometimes couples, and a lot of minority businesses and a lot of women-owned businesses that are small and startup.

Frankly, when it comes to regulations, the most consistent complaint is that the regulatory process never involves small business until it is all finished and it is too late. They are not around to make practical suggestions to seek just some ordinary, common sense in this process. Many regulations take a long time from beginning to end. As a matter of fact, some take 2 years, Mr. President, 2½ years.

What we seek in the first part of this amendment is precisely what the small business people have told us, and told this administration, that they desperately want. Last year, five agencies, including the Small Business Administration, EPA, and OSHA, held a forum on regulatory reform. Let me quote what they said:

> . . . the inability of small business owners to comprehend overly complex regulations, and those that are overlapping, inconsistent and redundant.

They have indicated that:

> The need for agency regulatory officials to understand the nuances of the regulated industry [small businesses, women-owned businesses, minority businesses] and the compliance constraints of small business.
>
> The perceived existence of an adversarial relationship between small business owners and Federal agencies.

All of these were statements made at that forum that this administration held with small business for small business.

So let me read one more time:

The need for more small business involvement in the regulatory development process, particularly during the analytic, risk assessment and preliminary drafting stages.

That is what they said was the paramount problem. It is in their own report.

Mr. President, this amendment has a lot of pages to it because, whenever you start mentioning Federal agencies and bureaucracies, you have to make all kinds of references. Essentially this would create a partnership, not an adversarial, not a take-it-to-court, not a mandatory situation, but would create panels wherein small business would become partners with the agency officials that are doing this work. So that before the regulations are finalized, they would have some input into what the regulations have to say, whether they are consistent, whether they are too confounding, too complicated, where they do not make sense. All of that, in my opinion, should be part of a well-run executive branch with reference to regulations that OSHA and the EPA put out right now.

I just tried to construct a way to set these panels into existence so that they will be ongoing and each State will have small business input within their States through this process to get small business input. It will be a small number of businesses—just three. There will be a group of bureaucrats or agency people who move this along and make sure that the input is given and passed on where it should be. If it works right, in our sovereign States a few small business people become part of an ongoing dialog regarding regulations that, I think, be it utterly simple, could have a profound effect on what currently is a very bad situation.

Who has not heard a small business say that, ''Government regulators treat us like enemies''? If you have not heard it, you have not been among them. If you have not heard them say, ''They do not care what we think,'' you have not been among small business people.

We are trying in a simple way to see if in time we can get those kinds of things wiped away from the scene as far as the regulations, and that there be more partnership-type exchange between those that create the jobs in America, that pay the bills, and those that attempt to regulate them and their lives and their businesses sometimes in very wasteful and unreasonable ways.

So, Mr. President, there may be room to change some of the words to make it very clear what we intended. We will work with Senator JOHNSTON's staff and Senator GLENN's staff. We have already talked at length with the chairman of Governmental Affairs, Senator ROTH, and his staff. They tend to think this is a good amendment and should be adopted.

Mr. President, almost all of the small business owners I talked to—who are the people who create almost all of the jobs in my State—told me just how smothering this explosion in regulations has become.

Further, almost without exception, these small business owners identified the Occupational Safety and Health Administration [OSHA] and the Environmental Protection Agency [EPA] as the two Federal agencies which promulgate the most unreasonable and burdensome regulations.

Further, Mr. President, because a great number of new businesses are being started by women, some of the most vocal critics of EPA's and OSHA's unreasonable regulations are women-owned businesses.

I believe one of the biggest reasons for these attitudes among America's small businessmen and women is that they are just not adequately consulted when regulations affecting them are being proposed and promulgated.

I am not alone in this belief.

Last year five agencies—including the Small Business Administration, EPA, and OSHA—held a Small Business Forum on Regulatory Reform.

Let me quote from the Administration's own report summarizing the principal concerns identified at the forum:

The inability of small business owners to comprehend overly complex regulations and those that are overlapping, inconsistent and redundant.

These panels will be responsible for providing technical guidance for issues impacting small businesses, such as applicability, compliance, consistency, redundancy, readability, and any other related concerns that may affect them.

These panels will then provide recommendations to the appropriate agency personnel responsible for developing and drafting the relevant regulations.

The panels will be chaired by a senior official of the agency and will include staff responsible for development and drafting of the regulation, a representative from OIRA, a member of the SBA Advocate office, and up to three representatives from small businesses especially affected.

The panel will have a total of 45 days each to meet and develop recommendations before a rule is promulgated or before a final rule is issued. Forty-five days, in the context of rules that are years in development, is not a delay.

In fact, these agencies know months in advance that they will be preparing these regulations. Sometime during this period, the agencies can seek these panels' advice.

This will allow the actual small business owners, or their representative associations, to have a voice in the massive regulatory process that affects them so much.

Finally, this amendment will also provide for a survey to be conducted on regulations. This idea is analogous to what the private sector routinely practices.

A customer survey, contracted and conducted with a private sector firm, will sample a cross-section of the affected small business community responsible for complying with the sampled regulation.

I believe that this panel, working together so all viewpoints are represented, will be the crux of reasonable, consistent and understandable rulemaking.

Further, my amendment enjoys the support of the National Federation of Independent Business.

Also, I previously spoke of the Small Business Advocacy Council which I set up in my State.

Mr. President, I believe this amendment will help reduce counterproductive, unreasonable Federal regulations at the same time it is helping to foster the non-adversarial, cooperative relationships that most agree is long overdue between small businesses and Federal agencies.

CONCLUSION

Mr. President, a second part of this amendment would greatly aid small businesses as they deal with these seemingly endless Federal regulations.

For a further explanation of these provisions, I would like to yield to my good friend and chairman of the Small Business Committee, Senator BOND.

Let me conclude that the National Federation of Independent Businesses wholeheartedly supports this amendment as a bona fide effort to get small business involved in a non-advocacy manner but regular and ordinary involvement in the preparation of regulations that affect them.

I ask unanimous consent that the letter from the National Federation of Independent Businesses be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
Washington, DC, July 12, 1995.

Hon. PETE DOMENICI,
U.S. Senate, Washington, DC.

DEAR SENATOR DOMENICI: On behalf of the more than 600,000 members of the National Federation of Independent Business (NFIB), I am writing to express NFIB's support for your legislation, the Small Business Advocacy Act, as an amendment to S. 343, along with Senator Bond.

Small businesses have long been at a disadvantage in accessing the regulatory process. They simply do not have the time or resources to closely follow the Federal Register and work with agencies to ensure that regulations are not unnecessarily burdensome. This issue is of such importance that it was voted the number three recommendation in the recent White House Conference on Small Business.

Your legislation provides a mechanism, through its establishment of small business review panels, to ensure that the small business voice is heard as regulations are being developed. As a result, regulators are more likely to achieve their implementation goals at a lower cost and with less burden on small businesses.

Further, your legislation establishes a small business and agriculture ombudsman

in federal agencies where small business owners can confidentially report on compliance and enforcement proceedings. The ombudsman can then issue findings and recommendations to improve enforcement activities and ensure that regulations are understandable and reasonable for small businesses.

NFIB supports your efforts and will work with you to enact your amendment.

Sincerely,

DONALD A. DANNER,
Vice President.

Mr. DOMENICI. I yield to my friend, the chairman of the Small Business Committee, Senator BOND.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I am pleased to join with my very distinguished colleague from New Mexico and the other Senator from New Mexico, Senator BINGAMAN, in offering this amendment. I commend Senator DOMENICI for all of the work that he has been doing on the very difficult budget process, and for the great work he has put in this early on this year.

He asked if I would join him to listen to the small business people who had come to him in New Mexico and who wanted to share with us in Washington the concerns they had about how the Federal Government was making it far more difficult for small businesses to thrive and even to survive.

We had an excellent field hearing in Albuquerque, NM, where we learned a great deal about the concerns of small businesses about excessive regulations and excessive and abusive enforcement tactics by Government agencies.

Here in Washington those might seem like overused phrases. But outside the beltway, in the real world, where the men and women of small business are trying to earn a living for themselves and their families, to create jobs and to improve their communities, they are suffering real harm from precisely those excessive regulations and excessive and arbitrary enforcement.

We heard from Ms. Angela Atterbury, owner of a small business in Albuquerque, NM. She told us of a small businessman who was a first-time offender of an OSHA regulation and was fined $8,000; no education or explanation, just a fine, which almost put the man out of business. She told us of a small pest-control company transporting one to two pints of pesticide who must comply with the same regulations as a large shipper of chemicals. And a candymaker who cannot legibly print all the information required by the FDA on the candy bar wrapper.

You have to have a separate sheet of paper attached to each candy bar to get all the information on it.

We also heard from Mr. Gregg Anesi, a small businessman from Farmington, NM, who testified that too often there is no practical recourse for a bad regulation or a bad regulator.

This is something that we have heard time and time again. Many, many small businessmen and women have asked us, ''What do you do if you are small business and you cannot afford to hire a hoard of lawyers, and you cannot afford to carry on a battle with an agency? You have somebody who seems to be overstepping their authority or misinterpreting regulations. How do you get out of it?''

This is really a crushing problem for many small businesses who run head on into the Federal Government and feel like they have been hit by a truck. And many, many more small businessmen who were literally drowning in the flood of government regulations.

The Small Business Committee has held field hearings in several other States since that time, and the message from small business owners at each of these hearings is strikingly similar. In my own State of Missouri, I heard from Mr. Leon Hubbard, the owner of a small homebuilding company in Blue Springs, MO. Mr. Hubbard persuasively describes the disproportionately burdensome impact on a company like his of regulatory paperwork obligations. OSHA requires companies like his to have files of Material Safety Data Sheets for all hazardous products on a home construction site, in spite of the fact that most products carry their own warning labels and despite a 1992 OSHA study that indicated less than 1 percent of all construction fatalities resulted from chemical exposure.

We know from other instances where people have been hit by OSHA because they did not have a safety material data sheet on a bottle of Dove soap, the kind that any of us may use in household cleaning activities. This is the length to which some of them have gone.

He also pointed out the unfairness of OSHA's multiemployer work site policy. Arbitrary enforcement of this rule makes builders like himself legally responsible for the safety practices of employees of independent subcontractors working on the same job site even though he might not have any direct authority over the employees. This means that one employer could be cited for safety violations of another employer.

Another piece of very compelling and interesting testimony came from Mr. James M. White, senior program director for the Local Initiative Support Corp. in Kansas City describe his frustrations with the problems created for central city redevelopment by the unpredictable enforcement of environmental regulations. Mr. White is a senior program director for a national non-profit organization funded by the private sector to provide support to community development corporations. He testified about his personal involvement in six proposed development projects in central Kansas City where the projected development costs were escalated to excessive levels by uncertainty over cleanup requirements under environmental laws. The defensive and over cautious approach taken by lenders and others as a result of inconsistencies and uncertainties about potential environmental liabilities dramatically increase project costs and reduce redevelopment opportunities. Factories and jobs often are driven to locate in distant suburbs rather than in the central city where they would be welcomed by thousands of job seekers.

As a result of our hearings, Senator DOMENICI introduced S. 917, the Small Business Advocacy Act—to give small business a greater voice in development of regulations of EPA and OSHA—and I introduced S. 942—to give small business a greater voice in dealing with the enforcement of regulations, to give small businesses who feel they are being oppressed either by excessive regulations or by the enforcement of them some place they can go, some voice where they can be heard.

The amendment that Senator DOMENICI, Senator BINGAMAN, and I have proposed draws on both bills to produce what we think is a strong amendment for small business.

The part of the amendment drawn from S. 942 is designed to give small businesses a place to voice complaints about excessive, unfair or incompetent enforcement of regulations, with the knowledge that their voices for once will be heard. The amendment sets up regional small business and agricultural ombudsmen through the Small Business Administration's offices around the country to give small businesses assurance that their confidential complaints and comments will be recorded and heard.

I cannot tell you how many times a small businessperson has come up to me and said, ''Man, this inspector from OSHA was really tough on me, but I am scared to death because if I complain to his supervisor, I am going to get it doubly bad the next time.''

Well, there ought to be some kind of check, some kind of confidential process in which he can place that complaint. And if there are others like him who are also being abused by that particular inspector, perhaps the ombudsman can do something about it.

The ombudsman also would coordinate the activities of the volunteer Small Business Regulatory Fairness Boards, made up of small business people from each region. The board would be able to investigate and make recommendations about troublesome patterns of enforcement activities. Any small business subject to an inspection or enforcement action would have the chance to rate and critique the inspectors or lawyers with whom they deal.

Now, they may not like them all, but you can sure find out, when you listen to the people who are subjected to the inspections and the regulations, who are the responsible officials and who are the overly aggressive and excessively burdensome and overbearing regulators.

In dealing with small businesses today, too many times an agency seems to assume that everyone is a violator of the rules, trying to get away

with something. Many agencies do a good job of fulfilling their legal mandate while assisting small business, but there are some that seem stuck in an enforcement mentality where everyone is presumed guilty until proven innocent. That is not our system. That is not the American way.

From your experience and mine, we know that most people want to comply with the law if they know what it is. We still need sanctions. We still need enforcement for those who willfully refuse to do so. But let us not assume that everyone wants to violate the law and wants to overlook the requirements for safety, for health and other legitimate regulatory purposes.

I think we ought to let small businesses compare their dealings with one agency to dealings with another so that the abusive agencies or agents can be weeded out and exposed. Agencies should be vying to see which can fulfill their statutory mandate in ways that help and empower small business to accomplish their purposes, whether it be safety in the workplace or cleanliness of the environment. The agencies ought to be helping first the people involved to do the job that they want done and to do it properly.

We need direct feedback, and I think the agencies need direct feedback from small business women and men around the country on how well regulators are doing their job.

In my view, the Domenici amendment will for the first time take the fight outside the beltway and attack the regulations and the agencies where they impact people in their day-to-day lives.

Now, most of my colleagues in this body have received complaints. If you have not heard thousands of those complaints, you must not be listening because every day they come to Washington to tell the Members of Congress how bad they are being treated. Let us give them a chance to get a hearing out in the area where they live to identify at the location where it is happening those agencies or representatives of agencies who are overstepping their boundaries.

Mr. President, last month the President told the White House conference that he wants Government regulators to stop treating small business men and women as criminals and start treating them as partners or customers. I commend him for that, and I believe this amendment will help to make that goal a reality and bring much needed relief to small businesses across the country. I really hope the President will follow through on his speech to small business and join with the National Federation of Independent Businesses in supporting this amendment.

I point out, since I am talking about the conference, that this White House Conference on Small Business which just completed brought a lot of good ideas and a lot of information to Washington, and the No. 3 priority which the small business delegates put on the agenda was dealing with regulation and paperwork. They had a vote of 1,398 who said the third priority should be amending the Regulatory Flexibility Act, making it applicable to all Federal agencies including IRS and DOD, and including the following—and this I note parenthetically, that the Dole substitute, this measure under consideration, does just that. It strengthens the Regulatory Flexibility Act. It also does the other following things set forth in that priority listing:

A. Require cost-benefit analysis, scientific benefit analysis and risk assessment on all new regulations.

B. Grant judicial review of regulations, providing courts the ability to stay harmful and costly regulations and requiring agencies to rewrite them.

C. Require small business representation on policymaking commissions, Federal advisory and other Federal commissions or boards whose recommendations impact small businesses. Input from small business representatives should be required on future legislation, policy development and regulationmaking affecting small business.

The regulations go on, but I think any of us who travel in our States and listen to the small businesspeople will agree that even if you were not fortunate enough to attend the conference, these are the concerns of small business.

I believe the Domenici amendment helps this excellent substitute that is before us to address those needs.

The PRESIDING OFFICER. The Senator's time has expired.

The Senator from New Mexico has 2 minutes.

Mr. DOMENICI. Mr. President, I ask unanimous consent that Senator COHEN of Maine and Senator ABRAHAM of Michigan be added as original cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. I ask unanimous consent there be printed in the RECORD a letter from Angela Atterbury, of Atterbury & Associates, who is the chairperson of my Small Business Advocacy Council, expressing our entire New Mexico Advocacy Council support of this amendment.

There being no objection the letter was ordered to be printed in the RECORD, as follows:

ATTERBURY & ASSOCIATES, INC.,

For the past two years, the Small Business Advocacy Council has worked to identify solutions to regulatory issues which create unreasonable burdens for small business. Our members, comprised of women and men small business owners, currently are underrepresented in the regulatory process. By providing a presence to small business people on a regulatory review panel, Congress would level the playing field toward small business, which often can not absorb the costs or the time required to understand the language of existing regulations.

This is what small business wants—an opportunity to act in an advisory capacity and work together with agencies. This would help refute what is seen by small business as the agencies' adversarial position toward them. It would provide a much-needed dose of reality by those of us who live our day-today lives outside the Beltway to those who live within its confines, in terms of application, readability, costs and other germane issues. The review panel will also give each side a means to communicate and soften the stance many in the small business community hold of the agencies, that is, that their existence is justified only by levying fines to small business.

Sincerely,

ANGELA ATTERBURY,
President, Chair,
Small Business Advocacy Council.

Mr. DOMENICI. I was very pleased that my friend from Missouri mentioned some of the people in our State who testified before his small business hearing, and I might just in my remaining minute for the record thank him for mentioning them and refresh his recollection about the farmer who brought to the hearing room all of the attire, from boots to an orange jacket, to a headpiece where he had to cover his face. And it was because of the newest regulatory schemes that we have under the protection of Agricultural Workers Act. That may not be its formal name.

What he said was very interesting. I wanted to say this when Senator NICKLES, the great golfer, was in the Chamber. He said, I believe we can prove that every golfer who plays 18 holes of golf on a modern grass course gets exposed to more of that which you are trying to protect farm workers from than in 1 year on the farm, but farmers' aides will be wearing this attire like they were from outer space. He said, how would the golfers feel with all of that on them to protect their legs which are exposed as they wear shorts out on the golf course.

I think those are some of the things that somehow or another, sooner or later we are hopeful the point will get across about common sense, and we believe our amendment will add a little bit of potential and possibility for that happening.

Mr. President, I understand Senator GLENN and the staff of Governmental Affairs wants more time to look at my amendment. So, I ask unanimous consent that whatever the previous order was, that the Domenici amendment be set aside and that it follow in sequence for tomorrow morning for the first amendment that would come up tomorrow morning, whatever that might be.

Is that satisfactory with Senator GLENN?

Mr. GLENN. It is satisfactory to me. All we want to do is have a chance to look at it. There is some irritation expressed that we were even questioning this.

Mr. DOMENICI. Let me ask that it be set aside temporarily.

The PRESIDING OFFICER. The amendment has been set aside for the consideration of the amendment by the Senator from New Jersey.

Mr. DOMENICI. I am supposed to be back here to present the rest of my amendment. I am not going to do that if it is to no avail.

Mr. GLENN. We would be happy to comply with all these things. We have a number of questions on these. They are legitimate. We will have the administration, the Justice Department, look into this tonight to be able to give an answer in the morning. We would not be able to give approval or accept this this evening. I think it is a good idea to put it off until tomorrow. Then the Senator from New Mexico would not have to come back tonight.

The PRESIDING OFFICER. It is the Chair's understanding that the Senator from New Mexico controls when his amendment will be called up. He can have it set aside in order to hear the presentation by the Senator from New Jersey.

Mr. DOMENICI. Thank you.

The PRESIDING OFFICER. It will come up when he calls it.

Mr. GLENN. It is subject to being called up either tonight or tomorrow; is that correct?

The PRESIDING OFFICER. That is correct. We would proceed following the Senator from New Jersey.

The Senator from New Jersey is recognized to proceed.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from New Jersey is recognized.

Will the Senator from New Jersey yield?

Mr. ROTH. For the purposes of unanimous consent.

Mr. LAUTENBERG. I would be pleased to yield without losing my right to the floor to the distinguished Senator from Delaware.

Mr. ROTH. We will withhold. I understand there will be one more unanimous consent.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. I thank the Chair.

AMENDMENT NO. 1535 TO AMENDMENT NO. 1487

(Purpose: To strike the provisions relating to the toxic release inventory review)

Mr. LAUTENBERG. I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending Domenici amendment is set aside. The clerk will report the Lautenberg amendment.

The legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG], for himself, Mr. BAUCUS, Mr. LIEBERMAN, Mr. KERRY, Mr. BRADLEY, Mrs. BOXER, Mr. SIMON, Mr. KENNEDY, and Mr. MOYNIHAN, proposes an amendment numbered 1535 to amendment No. 1487.

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 72, strike lines 1 through 15.

Mr. LAUTENBERG. Mr. President, this amendment would delete a provision currently in the bill that is unrelated to regulatory reform and would greatly weaken a critical environmental law generally known as the community right-to-know law, or the Toxics Release Inventory, commonly called TRI.

Mr. President, I was the original sponsor of the right-to-know law. I am proud that it has proved to be one of the most effective environmental laws on the books. The right-to-know law has no prescriptive requirements. It does not force anyone to do anything except release information. It is a simple sunshine statute.

Mr. President, I would strongly oppose the emasculation of the right-to-know law no matter what the vehicle. But this clearly is not the proper way to consider such a huge change in the major environmental law. The right-to-know provision in this bill has been subject to hearings or scrutiny in the Environment and Public Works Committee. And the substance of the proposal goes well beyond the changes proposed for other types of regulations.

Mr. President, as I said, my amendment proposes to delete a section of the proposed legislation that reduces the effectiveness of the right-to-know law, commonly called TRI, Toxics Release Inventory. Most of us who have been here for a while have worked on legislation that sometimes turns out to be less effective than we had hoped. The right-to-know law, on the other hand, has proven to be even more effective than we expected. It has also proved to be less obtrusive to business than other environmental laws that are on the books.

Now, most environmental regulations operate by command and control. They require companies to take specific actions, such as lowering emissions, sometimes by a specific date, sometimes by a specific technology. Some environmental laws require industry to develop technology that does not yet exist. And these types of prescriptive regulations are probably the major reason that industry has been pushing for this so-called reform legislation.

But the right-to-know legislation is quite different. The Toxics Release Inventory imposes no regulatory control. It requires no permitting. It sets no standards. It requires no registration, labeling or reduction in emissions. It does not even require monitoring by a Federal agency. All it requires are estimates of the amount of toxic chemicals that facilities release into our environment. And this information is very helpful to local officials, to fire and emergency personnel and to those who live near the plants. Despite the lack of specific requirements, the right-to-know law has probably led to more voluntary pollution prevention efforts and more environmental cleanup than any other law. The right-to-know law requires companies to list the amount of certain chemicals that leave their facilities through air, through water, or shipment to land disposal facilities.

Currently, 652 chemicals are required to be disclosed. Each has well-established adverse health effects or is carcinogenic or toxic.

Now, under the law, in deciding which chemicals to include on this list, EPA is not required to do a full risk assessment. On the other hand, the law does not restrict companies from releasing these chemicals. All that is required—and I make this point over and over again—is disclosure. The right-to-know law has proven effective primarily because it has influenced the voluntary behavior of corporations. First, many companies have voluntarily reduced the emissions of harmful chemicals in order to avoid negative publicity. By requiring companies to tell the public the truth about the chemicals they are emitting, the law has created a strong incentive for industry to reduce emissions even though, again, they are not required to do so by law.

Beyond creating the possibility of adverse publicity, the right-to-know law has worked by encouraging businesses to reduce waste for the sake of their own bottom line. Company after company has discovered the material they were putting out through the stacks or pouring into the water could be recovered and reused. One company in New Jersey cut its emissions by 90 percent once they looked at the value of the materials they were simply throwing away. And when we look at what some of the companies say, it is rather illuminating. This quote from Ciba-Geigy, a very important pharmaceutical manufacturer, in 1993 in the environmental report that said:

The initial demand for environmental reporting came from the public. But in responding, we have discovered that the information is extremely useful to our own management. We have learned about our successes, our inadequacies and the gaps in our knowledge. It's a good example of the way in which external pressures ultimately prove of benefit to the environment and to industry.

Mr. President, lots of these materials are very expensive. And when they are wasted, they have a negative effect on the company's bottom line. Yet before the right-to-know law was enacted, perhaps surprisingly many companies simply did not appreciate the extent to which chemicals were being wasted by emitting them into the environment rather than using them in their product manufacturing. The right-to-know law has given many corporations the information they need to reduce this waste. As a result, many have redesigned their manufacturing processes, begun recycling chemicals, and taken other steps to reduce waste.

This chart helps to demonstrate the impact of the Toxics Release Inventory. In 1988, 4.8 billion pounds of toxic material were sent into the waste—air, land, or water. In 1992, 4 years later, we had a dramatic reduction, down to 3.2 billion pounds, and in 1993, 2.8 billion pounds, a reduction of 2 billion pounds of toxic material being emitted into the waste stream in a period of only 5 years.

Now, what is going to happen if the present bill goes into effect as is, turns into law? Then the right to know—nothing will be the predominant rule. Mr. President, not only is it unfair, costly, wasteful, but it will give the companies a chance to relax rules that proved beneficial for them and nonbeneficial for the health and well-being of the residents or those who work in the area.

Let me repeat, emissions have been reduced by 42 percent or, as I said earlier, 2 billion pounds in dangerous chemical emissions. Yet, all of this is at risk if the provision included in the bill is enacted into law.

Do we really want to change the right to know into knowing nothing? I hope not. Should not our citizens be aware of the risks that they and their families undergo?

The chemical industry has acknowledged the value of the right-to-know law. We can look at the testimony by the Association of Chemical manufacturers. They say:

> The chemical industry can work within the requirements of title III to achieve two important objectives: Improving local emergency planning and informing the public about chemical operations.
>
> These objectives are vital to the long-term success and competitiveness of the chemical industry. Facility managers must take the initiative and work directly with local government and communities to make this law work.

Or someone representing DuPont, Mr. Vernon Rice, said:

> The beauty in the TRI is that a company can decide for itself how it will achieve reductions and can deploy the most cost-effective methods to do so. The law and the regulations that follow provide the incentive that industry then is provided with discretion on how to make the reductions.

I might add, Mr. President, industry also can decide not to make any reductions at all.

The bill before us would undermine the right-to-know law by changing the rules for designating those chemicals that must be disclosed. It makes it easier to take chemicals off the list and harder to put them on.

Under the new test, EPA would have to know about emissions and exposure levels at plants throughout the country to determine their likely impact. But because the TRI information on that chemical would not exist, EPA would not have enough information to meet the new test. This new standard puts the cart before the horse. This would completely defeat the purpose, intent, and the positive successes of the TRI program.

The TRI list is not perfect and perhaps some chemicals should be removed. Yet, present law has a proven system to consider petitions to remove chemicals from the list. Seventeen chemicals have been taken off the list through the petition process.

I urge my colleagues in the strongest possible terms to reject this special interest legislation. It is a paternalistic proposal that would have the Congress tell the American communities that they do not have the right to know about chemicals that could have a fundamental negative impact on their lives. It is a proposal that says to community officials that you need not have a right to know about chemicals that can cause serious harm to your constituents. It is a proposal that says to parents, you may be concerned about how toxic chemicals will affect your children, but it is more important that industry should have the right to withhold that information about chemicals that they are emitting into the atmosphere, into the water, and into the land.

This is bad special interest legislation, Mr. President. The section on the right to know is an exception from the $100 million threshold in the rest of the bill. It has no place in this legislation, and I urge my colleagues to support my amendment to delete it.

Mr. President, I believe that we have an hour equally divided, according to the unanimous consent agreement; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. LAUTENBERG. How much time does my side have?

The PRESIDING OFFICER. The Senator has 16 minutes 40 seconds remaining.

Mr. BRADLEY, Mr. President, I rise in support of the amendment to remove the Toxic Release Inventory provisions from the regulatory reform bill. On June 28, 1995, I wrote to the majority leader suggesting that this section and the provisions affecting Superfund be removed from S. 343. I said at that time that I was troubled by the bill's inclusion of special provisions affecting the effectiveness of the toxic release inventory, TRI, also known as the Community Right-To-Know Act.

The Community Right-To-Know Act, which builds on programs pioneered by my home State of New Jersey, is considered a complete success by almost all those who have analyzed its performance. In fact, it is precisely the kind of alternative to conventional command-and-control regulation which the drafters of S. 343 say they endorse. It requires full community disclosure for a list of chemicals which may prove hazardous to human health or the environment, especially in case of accidents.

In response to required TRI disclosures, and without the need for restrictive regulations, companies have voluntarily reduced their use and emissions of chemicals on the TRI list. This form of pollution prevention has actually saved companies money, caused them to retool their operations for greater efficiency and gained them good will in their communities.

And using TRI information, nearby communities have taken the precautions they need to protect themselves in the event of an emergency.

Unfortunately, the bill would require EPA to replace its current hazard-based listing process for the addition of new chemicals under TRI with an unworkable, risk-based process which would result in the addition of few, if any new chemicals to the TRI list. The bill would also require EPA to remove chemicals from the TRI list if the Agency could not make a showing that a particular chemical was acutely toxic to areas beyond a facility's boundaries. Obviously, this kind of restriction on TRI's effectiveness would result in serious emergency response problems. Even worse, the blll's restrictive language would eliminate coverage for chemicals which cause chronic health hazards, reproductive effects or environmental damage. The result—elimination of about 90 percent of the chemicals on the TRI list.

The bill would also require the Agency to prove that listed TRI chemicals cause harm when they are released to the environment before requiring companies to report their pollution under TRI. But since TRI is a full-disclosure statute and not a regulatory one, this standard is irrelevant. The purpose of TRI is to let a plant's workers and nearby community know what is going on at facilities which are their employers and neighbors.

Even with TRI, there are still problems with insuring that a community receives the information it needs for coping with chemical emergencies and discovering bad actor companies. A recent accident in Lodi, NJ points out the need for an expansion of TRI which puts chemical information into a user-friendly form. At the time of the accident the community found it lacked the data it felt it needed.

I will soon introduce legislation to require centralized information collection and distribution of all the information available on a plant or group of plants, including state data, violation and accident history. While all this information is available now, you have to be Sherlock Holmes to ferret it out.

Mr. President, restricting and usefulness of TRI makes no sense. It is a low-cost, nonregulatory way of improving the environment that other programs should be copying. And it is exactly the kind of protection that communities like Lodi need.

Mr. LAUTENBERG. Mr. President, I ask if the people in opposition have comments that they would like to make at this juncture, or if there are any of those people who are cosponsors of my amendment who are here who would like to add their thoughts. We have cosponsors who are indicated on the legislation, a significant number of them. If they would like to make any comments, this is the time they are going to have to do it, because the clock is ticking and I hate to see the time wasted.

Unless anyone wants to speak, Mr. President, I will suggest the absence of a quorum.

Mr. JOHNSTON. Will the Senator withhold?

Mr. LAUTENBERG. I will.

Mr. JOHNSTON. Mr. President, will the Senator yield me 10 minutes?

Mr. ROTH. I will be happy to yield 10 minutes. But first, I want to make three unanimous-consent requests.

The PRESIDING OFFICER. The Senator from Delaware.

UNANIMOUS-CONSENT AGREEMENTS

Mr. ROTH. Mr. President, I ask unanimous consent that when Senator FEINGOLD offers his amendment regarding equal access, that no amendments be in order, or in order to the language proposed to be stricken; that there be 30 minutes for debate to be equally divided in the usual form; and that when the Senate votes, the vote occur on or in relation to the Feingold amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROTH. Mr. President, I ask unanimous consent that when Senator FEINGOLD offers his amendment regarding peer review, that no amendments be in order, or in order to the language proposed to be stricken; that there be 15 minutes for debate to be equally divided in the usual form; and that when the Senate votes, the vote occur on or in relation to the Feingold amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROTH. Finally, Mr. President, I ask unanimous consent that when Senator PRYOR offers his amendment regarding private contractors, that no amendments be in order, or in order to the language proposed to be stricken; that there be 30 minutes for debate to be equally divided in the usual form; and that when the Senate votes, the vote occur on or in relation to the Pryor amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROTH. Mr. President, I yield 10 minutes to my distinguished colleague, the Senator from Louisiana.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, I rise in opposition to the amendment of the Senator from New Jersey. The language now in the Dole-Johnston substitute, I believe, is well tailored, calculated to achieve that result which all of us want, which is notice to the public of a toxic chemical which, under any reasonable scenario, can be expected to do some harm.

The problem is under the present statute, a chemical can be or, indeed, must be listed by the Administrator of EPA if it is known to cause serious chronic health effects. There are a lot of other provisions, but let me reread that: If it is known to cause serious or chronic health effects.

That phrase is so broad and so all encompassing as to encompass ordinary table salt, ordinary table salt which, if taken in sufficient quantities or, indeed, if ingested regularly in slightly too much degree can and does cause high blood pressure, and it can kill you if you take too much salt. Indeed, people out on boats in the ocean have ingested too much sea water and have died because of that.

I am not suggesting here that the Administrator of EPA is getting ready to list ordinary table salt as one of the chemicals. That is not the point. The point is that the phrase, as used in the present law, is so broad that it does not just look at the reasonable possibility of harm to an individual.

Rather, it looks at the chemical in an absolute way, without requiring that you consider whether there is any possible danger to the public from the way the chemical is used.

So what we have done, Mr. President, is added a few words to this so that when the Administrator makes a determination under this paragraph, it shall be based on generally accepted scientific principles, or laboratory tests, or appropriately designed and conducted epidemiological or other population studies.

That is in the present law. We have added this: ''And on the rule of reason, including a consideration of the applicability of such evidence to levels of the chemical in the environment that may result from reasonably anticipated releases available to the Administrator.''

So, in effect, we are saying do not just look at whether ordinary table salt can cause you to be sick, or can cause high blood pressure, or can poison you if you take too much of it; rather, look at ordinary table salt, or whatever these other chemicals are, and determine whether using, as we say, the rule of reason, including a consideration of the applicability of such evidence, to the levels of the chemical in the environment that may result from reasonably anticipated releases.

All we are asking, Mr. President, is that you use common sense, and that you do not just say because a chemical may be potentially harmful if ingested in ways that are unlikely—not only unlikely, virtually impossible—but rather use, Mr. Administrator, the rule of reason. I cannot think of a more reasonable amendment than to tell the Administrator to use the rule of reason. Does this gut the toxics release inventory? Of course not. It simply brings a little common sense.

Now, the amendment goes further. It says that ''any person may petition the Administrator to add or delete a chemical, and that the Administrator shall grant any petition that establishes substantial evidence that the criteria in subparagraph (a) either are or are not met.''

That is the language we added. In other words, you can get a chemical put on. If you are, say, an environmentalist and you want to add a chemical, you can petition to get it added if you meet that standard, or you can get the chemical deleted if you meet that standard. That is all the language does, Mr. President.

Now, you say, well, why would anybody want it to be off the list? Well, first of all, Mr. President, it is not just a question of having these chemicals listed, it is a burdensome and expensive system of having to report. A chemical manufacturer sells these chemicals across the country, and it might be a very benign chemical in the way that it is used. But each one of his vendees would have to report, and on down the line—I forget the amount that you have to have—it is 10,000 pounds, which for an industry is not very much. You would have to report that, even though there is no real possibility that the chemical is ever going to get out.

Now, Mr. President, I do not think that we have to worry about language that asks the Administrator to use the rule of reason in determining whether to put a toxic chemical on the list. I honestly think that any Administrator knows how to interpret those words.

Now, why was it necessary to put these on? Well, because in one day this last year the Administrator listed another 280 chemicals on the toxics release inventory, and the EPA felt that it had no authority, it had no discretion to determine whether there was any danger posed to the public by these chemicals, whether there was any possibility of harm. They felt that under this language, they had to list all 280 chemicals. Maybe the neighbors are upset and they say, oh, my gosh, you have all these terrible chemicals there that can cause all these terrible things—perhaps most of them or perhaps almost all. I do not know about the individual chemicals, Mr. President. But I am told by some people in the EPA—who will not be quoted, I can tell you that—that some of these chemicals are really no problem, should never have been on the list, but there was not the discretion in the Administrator to apply the rule of common sense and reasonableness.

Mr. President, this is not some big industry grab to force these chemicals on people across the country without warning, this is an attempt to apply the rule of reason to a very complicated thing.

Look, if the Administrator goes back, and somebody complains about this, the Administrator could say it is a toxic chemical, I think it is possible that it might get out, and believe me that ought to be on the list if it is possible the chemical will get out and cause harm. The Administrator has all the authority under this language that he or she would ever need to put that chemical on the list.

But, on the other hand, if it is no conceivable danger whatsoever, if you have a table salt kind of chemical, it should not be on the list and the Administrator ought to have the discretion to use the rule of reason and relieve people of these reporting requirements and relieve the community of the unnecessary fear in which a benign chemical might present.

That is all the language does, Mr. President. It is not gutting the toxics release inventory. It is not, in any way, harming the health of people.

Why should it be on this bill? Because it is a question of risk, and this

gives to the Administrator the judgment to apply real risk analysis in order to put chemicals on the list or take them off.

I yield the floor.

Mr. ROTH. Mr. President, I yield the distinguished Senator from Oklahoma 5 minutes.

Mr. NICKLES. Mr. President, I wish to compliment my colleague, Senator JOHNSTON from Louisiana, for his statement. I hope my colleagues heard his statement, and I hope they will vote against the amendment of my friend and colleague, Senator LAUTENBERG.

I think the language we have in the bill is good language. I understand the amendment of the Senator from New Jersey would strike that language. I want to make it perfectly clear that the language in the bill dealing with toxics release inventory review does not gut the statute of toxics release inventory—the TRI, as we have heard. What it does is introduce an element of common sense.

The Senator from Louisiana said, yes, if you have any type of chemical listed, it can be listed no matter how minimal that release might be. Even if there is no threat whatsoever under existing interpretation by EPA and others, they can list that chemical and set about a couple things. One, there is an enormous amount of paperwork and an enormous expense that consumers will pay for. Consumers are farmers, in many cases, or they might be somebody that may be making drugs for pharmaceutical companies, which, of course, increases the medical costs and so on. Every day people have to pay the cost.

Senator JOHNSTON also mentioned something else. He said these notices of release, if there is no real threat to public harm or public health and safety, people have a lot of unnecessary fears because of unnecessary notifications.

What this language does, and I will read it from the bill, ''including consideration of the applicability of such evidence to levels of the chemical in the environment that may result from reasonably anticipated releases.'' Reasonably anticipated releases.

In other words, not through the environment that we talked about sometime last year during the clean air debate. If somebody was outside the plant gate for 70 years, 24 hours a day, in the prevailing wind, maybe they might one out of a million chance have obtained a disease.

This says use common sense. That is what this language is about.

Also, it mentioned that if somebody wants to either be put on the list or taken off the list, they must have substantial evidence to do so. It is a higher threshold. They have to have substantial evidence to be able to get a chemical off the list, or substantial evidence to put the chemical on the list. Again, common sense.

I think that the language we have in the bill is well crafted. It is not radical. It is not extreme. It says we should use common sense. We can save a lot of paperwork, a lot of red tape, and we can eliminate unnecessary fears that some people have as a result of overzealous interpretation of the TRI statute.

I compliment my colleague from Louisiana and also the Senator from Utah, Senator HATCH, and Senator ROTH for this section.

I urge my colleagues to vote no on the Lautenberg amendment. I yield the floor.

Mr. LAUTENBERG. Mr. President, I listened with interest to my colleague's review of what this amendment is about within the bill as it is structured.

The one thing I have not heard is anyone deny this success ratio. From 1988 until the present day we have reduced toxics being emitted into the air, the water, and on the land by 42 percent—2 billion pounds in a period of 5 years, 2 billion pounds less of toxic material hanging around our kids, hanging around our families, hanging around our school yards. Gone.

And it does not mean diddly, as we say, in terms of the company's responsibility. We are not arresting anybody. We are not fining anybody. What we are saying is that they simply have to report. It is sunshine. Let the public know what it is that they ought to be concerned about, in the event of a particular emission.

It is great for fire departments. In one city in New Jersey, we had a fireman's protective gear melt off his body because of the chemical mixture. At least if they know this information, emergency response people can prepare the materials necessary to fight a particular release, explosion, or fire. What we are doing now is we are saying, Okay, the public really does not have a right to know this kind of thing.

All of these materials that are released are toxic, Mr. President. They do not get out there willy-nilly. This is not an administrator's dream of torture.

Mr. JOHNSTON. Mr. President, will the Senator yield?

Mr. LAUTENBERG. Very briefly for a question.

Mr. JOHNSTON. Just on the point that the Senator said that EPA is not arresting anybody.

According to ''Inside EPA,'' the weekly report for June 30, 1995, they do say that 3 priority sectors for determining enforcement actions were chosen because of noncompliance histories, toxics release inventory releases, and trans-regional impacts.

In other words, TRI releases are one of the bases on which they bring enforcement actions. Would the Senator agree with that?

Mr. LAUTENBERG. Say it again, please.

Mr. JOHNSTON. That one of the bases on which EPA brings enforcement actions is TRI releases.

Mr. LAUTENBERG. Yes.

Mr. JOHNSTON. So that it does have something to do with enforcement?

Mr. LAUTENBERG. There is a requirement that they have to file this information.

Mr. JOHNSTON. I mean on enforcement, where they send the investigators out. In other words, if you have TRI releases, they enforce the rules.

Mr. LAUTENBERG. If there is an accident that endangers the public health, yes, someone will look at it.

I would love to respond to my friend from Louisiana, but we are using my time and he is in opposition, so I do not want to give him my time to oppose this brilliant amendment.

The Senator from Massachusetts has asked for some time. He has worked very hard on these issues and I would be delighted to yield as much time as he needs, not to exceed 10 minutes.

Mr. KERRY. Mr. President, I think I will not need 10 minutes.

I would like to respond, if I can, to the comments of the Senator from Louisiana and to the whole concept of what is really at stake in revamping the Right-to-Know law and its Toxics Release Inventory (TRI).

First of all, we should remember that TRI is the Emergency Planning and Community Right-to-Know Act of Title III of Superfund. This program does not have the same breadth of regulatory reform we are reaching for in the bill before us. The fact is that this is a nonregulatory sunshine law and should be considered separately by the Senate Environment and Public Works Committee.

In fact, Senator SMITH on the Republican side has been doing a very good job of leading the effort to revamp the Superfund program and as Title III of that act this issue could be appropriately considered at that time. To date, however, there have been no hearings on this whole question of exactly what the impact of revamping the right-to-know law would be. In fact, there has not been a hearing on TRI in the Senate since 1991.

Yesterday, I attended a press conference outside this chamber where members of the firefighter unions of the United States, representing several hundred thousand firefighters, said, ''Don't do this. Do not change the TRI structure today and thereby put firemen at risk.''

What the TRI structure does today is allows fire departments all across this country to be able to plan for what kind of fire they may be going into. Because of the TRI, communities have computerized knowledge of precisely what chemicals exist in certain companies, in certain buildings. When the fire department gets an alarm, they simply punch the computer and the data comes up on the computer screen immediately so that firemen have the ability to be able to don masks, maybe don protective gear, call in additional help, take special measures to secure the area, evacuate personnel. All of that knowledge comes about because of a simple concept called Right-to-Know.

The TRI is not a regulation that does away with chemicals. It does not require companies to spend a whole lot of money to comply with regulations. It simply makes information available to businesses, to communities, and to citizens. That information allows citizens to then decide whether they think they are at risk and gives companies the information they need to help them reduce their wastes before they are created. It is the best tool to promote pollution prevention that we have in effect today.

What is interesting about this, Mr. President, is that just by requiring companies to tell Americans what they are emitting into the air or land or water—solely by the requirement to let people know—companies themselves have made important decisions about reducing wastes. So they have voluntarily removed 42 percent since its reception in 1988—two billion pounds—of the chemical emissions of this Nation.

That is a remarkable success story, Mr. President. It does not come about because we in the Congress have created a whole convoluted regulatory structure where companies are required to reduced their use of chemicals. All that is required is companies that use large volumes of toxic chemicals tell Americans what they are putting into the environment.

More than 2 billion pounds of emissions have been prevented as a consequence of that. That is a success story.

It is really interesting to see the chart from the Senator from New Jersey over there that shows the comments of individual sectors of the industry. The chemical industry itself has found it useful.

In point of fact, the former chairman of the Environment Committee, Senator BAUCUS, has yet to have one chemical company coming to them and saying, ''Get rid of TRI.'' It was not an issue in early regulatory reform bills or in the past two Congresses Superfund debates. It has just been snatched out of the air because clearly a few people decided they thought this got in their way.

Mr. President, turning to the standard that the Senator from Oklahoma talked about, what the language in this bill currently does is, in effect, it applies a 180-day requirement for this risk assessment to take place. If it does not take place, the chemicals come off. So you already have a sword of Damocles hanging over the process. Because if the Administrator does not want to do it, or if they do not have the resources to do it, you may wind up taking out of here an automatic capacity to have a decision. But more important, the language says, ''on the rule of reason, including a consideration of the applicability of such evidence to levels of the chemical in the environment that may result from reasonably anticipated releases.''

''Reasonably anticipated releases'' is the information we get from the TRI. So what they are doing is creating a standard that makes a judgment as to whether or not you are going to be able to put something on the TRI list using information that you have to have from the TRI list in the first place. And since you do not have it from the TRI list, you cannot make the judgment that is required here. That is called the proverbial Catch-22. It is a way of tying everybody up in a process that, in effect, kills the TRI concept.

They can stand here and say, ''Oh, no, no, no, no; all we are going to do is have a little risk assessment,'' but the language of the risk assessment itself depends on reasonably anticipated releases being able to be determined. And unless you know what the company is emitting, there is no way to know what the reasonably anticipated release is going to be.

So I respectfully submit this is one of those places where, again, the words are so important, and where an awful lot hangs in the balance.

Mr. JOHNSTON. Will the Senator yield at that point?

Mr. KERRY. I will be happy—I do not want to yield on my time, but I will yield on my colleague's time for a question.

Mr. JOHNSTON. Will the Senator from Delaware yield me 1 minute to ask a question?

Mr. ROTH. I yield 1 minute.

Mr. JOHNSTON. The Senator read, appropriately, the language which was added, which was, ''on the rule of reason,'' et cetera.

But the first paragraph in the present law is still there. That is, ''A determination under this paragraph shall be based on generally accepted scientific principles, or laboratory tests, or appropriately designed and conducted epidemiological''——

Mr. KERRY. Epidemiological.

Mr. JOHNSTON. ''Or other population studies, and/or the rule of reason, including consideration of the applicability of said evidence that may result from reasonably anticipated releases.''

So all we are giving him is that additionally he may consider additional evidence, including the amount that may be released.

Will the Senator agree that is a correct statement?

Mr. KERRY. Let me say to my friend, I understand his reading of it, but it still begs the question here. Because the standard of ''including,'' which is the most important way to prove what may be the harm to a community, is still not available.

Second, and this is far more important, let me say to my friend from Louisiana, what is critical here is why go through all of these incredible hoops when in fact nothing negative is required of the company unless it uses more than 10,000 pounds and produces more than 25,000 pounds? You are talking about big producers and big users here.

All that is required of these big, 10,000-pound users, 25,000-pound producers, is that they tell people in the community what it is they put into the air or water or land. It is irrelevant whether there is a risk or not in terms of the concept of sunshine and right-to-know.

What, in effect, the Senator from Louisiana and others are setting up here—whether it is wittingly, purposefully, or not—is a new series of hoops which, under the cumulative impact of this bill will allow a series of legal steps to be taken that will prevent people in a community from even knowing what one of these big producer companies is putting into the air.

Mr. JOHNSTON. Mr. President, is the Senator saying——

Mr. KERRY. Again, I do not want to yield on my time. I reserve my time.

Mr. JOHNSTON. Do I still have any of that minute?

The PRESIDING OFFICER. The Senator has used his minute. Will the Senator from Delaware yield him an additional minute?

Mr. ROTH. I will yield 1 minute.

The PRESIDING OFFICER. The Senator yields an additional minute.

Mr. JOHNSTON. I will not use that at this point.

Mr. KERRY. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 4 minutes.

Mr. KERRY. I will just use a moment.

Mr. President, the real issue here is very, very simple. The Senator from Louisiana is trying to explain how the test that they have set up is reasonable. The issue is whether or not there ought to be a test set up for a company that uses 10,000 pounds or more of a chemical or a company that produces 25,000 pounds or more. The issue is, should that company automatically tell people in the community what it puts into the air? It is very simple. And, by coming along with this notion we are going to go through all of this regulatory process with risk assessments and so forth, we are actually applying a series of standards and hoops to jump through that have no relevancy to the purpose of letting people know.

They are creating a risk-based standard for something that does not have to be risk-based but is simply informational. And, on the basis of that, there are certain chemicals that may be, actually, under their standard, taken off the Toxics Release Inventory which, in fact, have a negative effect on people, but they do not fall under their standard because of the level of toxicity.

So I say again, this is a very simple issue. This is a question of when Americans are living in a community where a company uses 10,000 pounds of a specific chemical or produces 25,000 pounds, whether that company ought to tell the fellow citizens who live in that community and who work in the plant, what it is that is being emitted. And by virtue of the law, we have taken 2 billion pounds of that kind of chemical out of the environment, away from people, and made life safer.

If they turn this clock back, we will make life more hazardous. And there is no rationale for saying Americans should not know what chemicals are going into the local environment.

I yield the time to the Senator from New Jersey.

The PRESIDING OFFICER (Mr. KEMPTHORNE). The Senator from New Jersey.

Mr. ROTH. Will the Senator yield so I can make a further unanimous-consent request?

Mr. LAUTENBERG. Yes. I do not want to continue to use my time.

Mr. ROTH. Without using the time of the Senator from New Jersey.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. ROTH. Mr. President, I ask unanimous consent that the 13 minutes that remain in opposition to the Lautenberg amendment be reserved for Senator LOTT and 5 minutes reserved for Senator LAUTENBERG.

Mr. LAUTENBERG. If I might ask, Mr. President, how much time do I have left on my side?

The PRESIDING OFFICER. The Senator from New Jersey has 1 minute 3 seconds.

Is there objection to the unanimous-consent request? Without objection, it is so ordered.

Mr. ROTH. Mr. President, I further ask unanimous consent that following the conclusion of the debate on the time agreements already entered for this evening, the Senate proceed to vote in sequence, with the first vote being the standard 15-minute vote and any remaining stacked votes be 10 minutes in length.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ROTH. Finally, for the information of all Senators, there could be as many as four rollcall votes beginning as early as 8:30 this evening. Therefore, Senators should be on notice of these upcoming votes.

The PRESIDING OFFICER. Under the previous order, the Senator from Wisconsin is now recognized.

AMENDMENT NO. 1536 TO AMENDMENT NO. 1487

(Purpose: To amend the provisions of titles 5 and 28, United States Code, relating to equal access to justice, award of reasonable costs and fees, hourly rates for attorney fees, administrative settlement offers, and for other purposes)

Mr. FEINGOLD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD] proposes an amendment numbered 1536 to amendment No. 1487.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the substituting amendment, add the following new section:

SEC. . EQUAL ACCESS TO JUSTICE REFORM.

(a) SHORT TITLE.—This section may be cited as the ''Equal Access to Justice Reform Amendments of 1995''.

(b) AWARD OF COSTS AND FEES.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(a)(2) of title 5, United States Code, is amended by inserting after ''(2)'' the following: ''At any time after the commencement of an adversary adjudication covered by this section, the adjudicative officer may ask a party to declare whether such party intends to seek an award of fees and expenses against the agency should it prevail.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(1)(B) of title 28, United States Code, is amended by inserting after ''(B)'' the following: ''At any time after the commencement of an adversary adjudication covered by this section, the court may ask a party to declare whether such party intends to seek an award of fees and expenses against the agency should it prevail.''.

(c) HOURLY RATE FOR ATTORNEY FEES.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(b)(1)(A)(ii) of title 5, United States Code, is amended by striking out all beginning with ''$75 per hour'' and inserting in lieu thereof ''$125 per hour unless the agency determines by regulation that an increase in the cost-of-living based on the date of final disposition justifies a higher fee.);''.

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(2)(A)(ii) of title 28, United States Code, is amended by striking out all beginning with ''$75 per hour'' and inserting in lieu thereof ''$125 per hour unless the court determines that an increase in the cost-of-living based on the date of final disposition justifies a higher fee.);''.

(d) PAYMENT FROM AGENCY APPROPRIATIONS.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(d) of title 5, United States Code, is amended by adding at the end thereof the following: ''Fees and expenses awarded under this subsection may not be paid from the claims and judgments account of the Treasury from funds appropriated pursuant to section 1304 of title 31.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(4) of title 28, United States Code, is amended by adding at the end thereof the following: ''Fees and expenses awarded under this subsection may not be paid from the claims and judgments account of the Treasury from funds appropriated pursuant to section 1304 of title 31.''.

(e) OFFERS OF SETTLEMENT.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504 of title 5, United States Code, is amended—

(A) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(B) by inserting after subsection (d) the following new subsection:

''(e)(1) At any time after the filing of an application for fees and other expenses under this section, an agency from which a fee award is sought may serve upon the applicant an offer of settlement of the claims made in the application. If within 10 days after service of the offer the applicant serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof.

''(2) An offer not accepted shall be deemed withdrawn. The fact that an offer is made but not accepted shall not preclude a subsequent offer. If any award of fees and expenses for the merits of the proceeding finally obtained by the applicant is not more favorable than the offer, the applicant shall not be entitled to receive an award for attorneys' fees or other expenses incurred in relation to the application for fees and expenses after the date of the offer.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412 of title 28, United States Code, is amended—

(A) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(B) by inserting after subsection (d) the following new subsection:

''(e)(1) At any time after the filing of an application for fees and other expenses under this section, an agency of the United States from which a fee award is sought may serve upon the applicant an offer of settlement of the claims made in the application. If within 10 days after service of the offer the applicant serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof.

''(2) An offer not accepted shall be deemed withdrawn. The fact that an offer is made but not accepted shall not preclude a subsequent offer. If any award of fees and expenses for the merits of the proceeding finally obtained by the applicant is not more favorable than the offer, the applicant shall not be entitled to receive an award for attorneys' fees or other expenses incurred in relation to the application for fees and expenses after the date of the offer.''.

(f) ELIMINATION OF SUBSTANTIAL JUSTIFICATION STANDARD.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504 of title 5, United States Code, is amended—

(A) in subsection (a)(1) by striking out all beginning with '', unless the adjudicative officer'' through ''expenses are sought''; and

(B) in subsection (a)(2) by striking out ''The party shall also allege that the position of the agency was not substantially justified.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412 (d) of title 28, United States Code, is amended—

(A) in paragraph (1)(A) by striking out '', unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust'';

(B) in paragraph (1)(B) by striking out ''The party shall also allege that the position of the United States was not substantially justified. Whether or not the position of the United States was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which is made in the civil action for which fees and other expenses are sought.''; and

(C) in paragraph (3) by striking out '', unless the court finds that during such adversary adjudication the position of the United States was substantially justified, or that special circumstances make an award unjust''.

(g) REPORTS TO CONGRESS.—

(1) ADMINISTRATIVE PROCEEDINGS.—No later than 180 days after the date of the enactment of this Act, the Administrative Conference of the United States shall submit a report to the Congress—

(A) providing an analysis of the variations in the frequency of fee awards paid by specific Federal agencies under the provisions of section 504 of title 5, United States Code; and

(B) including recommendations for extending the application of such sections to other Federal agencies and administrative proceedings.

(2) JUDICIAL PROCEEDINGS.—No later than 180 days after the date of the enactment of this Act, the Department of Justice shall submit a report to the Congress—

(A) providing an analysis of the variations in the frequency of fee awards paid by specific Federal districts under the provisions of

section 2412 of title 28, United States Code; and

(B) including recommendations for extending the application of such sections to other Federal judicial proceedings.

(h) EFFECTIVE DATE.—The provisions of this section and the amendments made by this Act shall take effect 30 days after the date of the enactment of this Act and shall apply only to an administrative complaint filed with a Federal agency or a civil action filed in a United States court on or after such date.

Mr. FEINGOLD. Mr. President, I rise today to offer an amendment to the regulatory reform bill legislation that will improve equal access to justice under what is known as the Equal Access to Justice Act.

I think the thrust of this bill, the thrust of regulatory reform, is to rethink the relationship between Government and business and to make our system of regulation both more effective and less burdensome, and, in some cases, I think we have to stay the hand of Government when we believe it reaches too deeply into the daily affairs of the American people.

As many of us have said on this floor, I think these are goals that everyone supports, even though sometimes we may differ on the way to actually achieve them.

The Equal Access to Justice Act is one effective means for achieving a measure of reform and should be part of our plans to reduce the level of unnecessary Government intrusion in our lives. The Equal Access to Justice Act as it now exists was enacted in 1980, with the idea that small businesses and individuals who have to get into the ring with the Federal Government over enforcement of regulations should be able to recover their legal fees and certain other expenses if they end up winning the case.

They are tied in this litigation with Government and one party has to win and one party has to lose. And if it is the Government that loses, especially after they have brought the case, I think the Government should bear the burden of the attorney's fees and not the small business and not the individual. It is one of a number of fee-shifting statutes in Federal law.

I am as proud to say that much of the work on the original equal access law was done by the former Congressman from my home district, the Second Congressional District of Wisconsin, Representative Robert Kastenmeier when he served on the House Judiciary Committee. I offered the same kind of bill, and got it passed in the State Legislature in Wisconsin. That is now the law, and has been since 1985, and it is the State Equal Access to Justice Act which has been very helpful to businesses and individuals who have been sued by the State government or some of its agencies.

The Equal Access to Justice Act gives prevailing parties in certain kinds of litigation against the Federal Government the right to seek reimbursement of attorney's fees and other costs of litigation from the Government. The intent of the law has always been to make taking on the Federal Government in court somewhat less intimidating although it is always going to be somewhat intimidating.

To that end, the act is specifically targeted at assisting individuals and businesses who do not have ready access to the kinds of resources available to the Federal Government when it goes to court. Under the current law, the law gives this kind of option—or protection—to a person whose net worth does not exceed $2 million or a business that does not have net worth greater than $7 million, or which does not employ more than 500 people. And there are a couple of other minor exceptions.

There was another motive for the bill, and that was to help restrain the regulatory hand of the Federal Government when it was going to trial. The authors of the bill believe that if the agency faced the prospect of not only having decisions nullified but also having to actually pay the attorney's fees of the entity or individual they went after, maybe the agency would think twice before it started the lawsuit or the administrative action in the first place.

I cannot say for sure in the past 10 or 15 years that this second goal has been reached. However, the Equal Access to Justice law has proved to be a bargain based upon the estimates that we have seen. Originally the estimates were that the Equal Access to Justice law would cost about $68 million a year. But according to the Administrative Office of U.S. Courts, annual fee reimbursements have totaled from the Federal Government only about $5 to $7 million between 1988 and 1992. This is despite the fact that litigants are actually more successful in terms of the active percentage of wins than was originally anticipated.

A study done on this examined 629 Federal District and Appellate Court decisions involving EAJA fee award claims during the 1980's. The professors who did the study pointed out that the Congressional Budget Office in making its estimates had assumed that parties seeking fee reimbursement under the act would actually be successful in about 25 percent of the claims filed against the Federal Government.

However, the professors found that they even had a higher level of success, 36 percent and were able to win fees in those cases.

Yes. Mr. President, some may well claim that EAJA has had a scant effect on controlling overreaching regulation. But I believe it is clear that it is another arrow in the quiver of the individual citizen or a small business owner when they have to tangle with the Federal Government in court or in an administrative proceedings.

The EAJA generally has served its function well. The purpose of my amendment this evening is that the act over the course of several years has come to the point where it needs some updating to speed up the process of awarding attorney's fees to prevailing parties and thereby lower the cost of litigation to taxpayers.

Mr. President, briefly, this amendment has three major elements.

First, my bill raises the current cap on attorney's fees in these kinds of situations under the act from the current limitation of $75 to $125 per hour. That would bring the rate somewhat in line with the real world.

My bill retains the cost-of-living increase as a possible element in determining an attorney's fee award but it strikes the current language that permits further increasing an award on the basis of a special factor defined by example in the statute as ''the limited availability of qualified attorneys or agents for the proceedings involved.''

Mr. President, I believe these improvements will actually make suits against the Government more attractive to attorneys and appropriate cases, which in turn should create a larger pool of attorneys available to private litigants to try to handle these cases. Therefore, we should see less need for this special factor language, and I think it will help simplify the process.

In addition, my bill makes the method of computing cost-of-living increases to fee awards more specific. And I could detail on that, if anybody wishes.

But I will move on to say that the second major change my amendment makes in the current law is to eliminate the language that allows the Government to escape paying attorney's fees, even if the Government has lost in court, if the Government can successfully argue that it had a substantial justification for its action.

Mr. President, I am not generally a supporter of the loser pays concept. But I believe that if a small business owner or an individual American wins in court—not against another private litigant but against the Federal Government—and, if the law provides for the Government to reimburse you for your expenses, then the Government should ante up. I think we should have in effect a loser pays provision when the Federal Government sues a private party and the private party ends up winning the case.

I realize some people are concerned that eliminating this provision will open the floodgates of our Treasury. But let me refer to a study that by Professor Krent which indicates that this is not the case. He indicates that fee awards in the cases we have had during this act were denied in only a small number of cases on the basis of successful substantial justification argument. Apparently that is because this technique of the Government to try to avoid paying fees in these cases in court is routinely raised by Government attorneys as a way to sort of block the private litigant from getting their attorney's fees even though they

have prevailed in the underlying case against the Government.

So this extra way out for the Government really allows the creation of another issue at least to more litigation over whether or not there was a substantial justification for the lawsuit to be brought in the first place, even though the Government lost.

The professor suggests that there may even be some cost savings offset any increase in awards due to the elimination of the substantial justification defense. He admits it is impossible to make an exact determination of the expense of litigating this issue in case after case. But he believes, based on the evidence of 1 year—between 1989 and 1990—that whatever is saved by raising the substantial justification defense is not enough to justify the cost of litigating the issue. That is one reason why Professor Krent believes that this extra way out for the Government, in his words, ''probably creates a perverse incentive to litigate'' on the part of Government attorneys.

My amendment specifically addresses the issue of cost by making it plain that there is to be no new direct spending to cover these fee awards. The amendment also makes it clear that agencies who are required to pay fee awards have to look to their own budgets. They cannot go to the Federal Claims and Judgment Accounts to find the necessary sums. That is in keeping with the original intent of the bill. That intent again is to make an agency think twice before it creates regulations and before initiating certain enforcement actions pursuant to them. I cannot think of anything more consistent with the overall purposes of legislation before us than that.

The third major change in any amendment sets up a settlement process to give the parties a method of resolving the fee issue without resorting to further litigation. It creates an opportunity for the Government, similar to the process in Rule 68 of the Federal Rules of Civil Procedure, to make an offer of settlement up to 10 days prior to the hearing on the fee claim. If that offer is rejected and the party applying for fees later wins a smaller award, there is a negative consequence to the party that did not accept the offer of settlement. That party is not entitled to receive fees or other expenses that are incurred after date of the offer.

My amendment does not specifically expand the reach of the EAJA. But it does require the review of the act and looks ahead to possible future expansion.

We asked both the Justice Department and the Administrative Conference to review various aspects of where the law could be expanded.

My amendment also requires the Administrative Office of the U.S. Courts to submit a report within 180 days as it does for the Justice Department.

The U.S. Supreme Court in a 1991 decision, Ardestani versus INS, held that EAJA fees are available only in cases where hearings are required by law to conform to the procedural provisions of section 554 of the Administrative Procedures Act.

However, Congress had already created a statutory exception. In 1986, Congress extended the coverage of the EAJA to include the Program Fraud Civil Remedies Act.

I think it is reasonable to investigate whether certain agency proceedings such as deportation cases that are nearly identical to proceedings covered by 554 should also be covered by the EAJA.

Mr. President, let me just conclude my comments at this point by indicating that recently a friend of mine I had not seen since high school just came to visit me in my office here and did not come, apparently, for any reason other than to visit.

But during the course of our visit, he told me a story about what had happened to him recently that made him quite down about pursuing the business he is in. He told me that his agency declined to fight a case against the Department of Education, a case their attorneys believed was winnable, because the board of directors of his group did not believe it was worth paying large litigation costs over a claim worth about $32,000 even if the agency had a good case.

The Department of Education, he told me, had reviewed his rehabilitation center, which provided job training and placement services for mentally and physically handicapped people, in 1992. The Department's reviewer found 10 problem areas, which were later actually whittled down, Mr. President, to just one item. All the Government had left in their case, after they went through this process, was saying that my friend's group had inadequate time sheets.

For this and this alone, the Department wanted the center to pay a reimbursement of about $115,000. That was later negotiated down to $32,000. My friend told me that had he known about the EAJA law, he would have pressed the directors to fight, and because he did not know about it, he just gave up.

A few weeks ago, the White House Conference on Small Business discussed this issue. Mr. Carl Schmieder, a Phoenix, AZ, businessman and deputy chairman of the Arizona delegation to the small business conference, helped spearhead a resolution endorsing the type of changes I am talking about for the EAJA. He said the array of resources available to the Government in litigation can be overwhelming to a small business owner, and he called the amendment that we are offering here tonight a tremendous step forward.

Mr. Schmieder's resolution attracted a lot of support among the delegates to the conference. Although it did not appear on the shortest list of recommendations that came out of the conference, when the delegates drew up a list of priorities, these kinds of changes were ranked in the top 20 percent of all issues considered.

I think individuals and small business owners deserve all the help we can give them, and before I close, let me acknowledge the work of the Administrative Conference of the United States which has been very helpful by conducting research into this issue, making many of these recommendations and providing valuable assistance in preparing the amendment.

We all know unnecessary or overburdening Government regulations can be an obstacle to doing business. The Equal Access to Justice Act was conceived to overcome that obstacle, and we in this update that this amendment provides allow the act to work better than it has in the past.

I thank the Chair and reserve the remainder of my time.

The PRESIDING OFFICER. Does the Senator from Delaware oppose the amendment?

Mr. ROTH. We have no request at this time for anyone to speak in opposition.

Mr. BAUCUS addressed the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin has 1 minute remaining.

The Senator from Montana.

AMENDMENT NO. 1535

Mr. BAUCUS. Mr. President, I would like to speak in favor of the TRI amendment offered by Senator LAUTENBERG. I might inquire of the Chair how much time is remaining on that amendment, and I might inquire of the Senator from Delaware, if he is not going to use his time, perhaps I could use some of his time on the TRI amendment.

Mr. ROTH. We are actually checking to see whether there is anyone who wants to speak in opposition.

Mr. BAUCUS. Mr. President, how much time is remaining for those speakers who wish to speak in favor of the Lautenberg amendment?

The PRESIDING OFFICER. The Senator from New Jersey, based on the unanimous consent agreement, controls 5 minutes.

Mr. BAUCUS. And how much time has he utilized?

The PRESIDING OFFICER. There is still 5 minutes remaining.

Mr. ROTH. I will yield 3 minutes to the Senator.

Mr. BAUCUS. I thank the Senator very much.

The PRESIDING OFFICER. The Senator from Delaware has yielded 3 minutes from the time he controls?

Mr. ROTH. That is correct.

Mr. BAUCUS. Mr. President, I might also consume, say, 1 minute of the time controlled by Senator LAUTENBERG, a total of 4.

The PRESIDING OFFICER. Is there objection to that request? Without objection, it is so ordered. The Senator from Montana is recognized.

Mr. BAUCUS. I thank the Chair.

Mr. President, I am rising to strongly support the amendment offered by the Senator from New Jersey [Mr. LAUTENBERG] who wants to strike the so-called TRI provisions from the bill. Under the TRI provisions, the toxics release inventory reporting provisions, currently today in the law, when a major chemical company emits toxic chemicals into the air or water which could cause acute, chronic, adverse health effects to the environment, that company just has to state to the public the amount of toxic chemicals that is released up into the environment.

It does not say to the company you have to put on a scrubber; it does not say to the company you have to clean it up; it does not say to the company you have to do anything to stop what you are emitting, just that you have to disclose to Americans, disclose to the public the amount that is being emitted. That is all it is.

I might say, Mr. President, that the consequences of this provision in the law enacted not too many years ago have been very beneficial. First, to the public so the public knows what is being emitted, and they can take whatever action they may want to take.

It has also been beneficial to the companies. The Chemical Manufacturers Association has said, as a consequence of this act alone, there has been a 50 percent reduction in chemicals emitted by their members. Some major chemical manufacturing companies have said it has helped them because they did not know how much they were emitting in the past. This law requires them to disclose what they are emitting. Now they know and they are able to change their manufacturing process to emit less and to also make their processes much more efficient. It has helped them.

It makes no sense, Mr. President, in this bill before us today, a regulatory reform bill designed to reform regulations and just make sure that regulations are considered more easily and more efficiently, to enact a substantive provision to delete the toxics release inventory law. That is a substantive provision. This is a regulatory reform bill.

I might add there have been no hearings on this provision, none. In fact, this provision was not even in any bill. It was just suddenly jammed in in the Chamber. It has had no consideration. Just as we deleted, a couple of hours ago, another substantive provision regarding the Superfund, it makes eminent sense that we should also here tonight delete this substantive provision, the toxics release inventory provision, a provision which is very beneficial to Americans.

Essentially, this provision that is now before us, I must say, disrupts the basic concept of right to know which simply says, OK, folks, you have a right to know what is emitted. That's all. It does not in any way tell companies to control what is being emitted.

Mr. President, for those reasons we should adopt the Lautenberg amendment to delete this substantive provision.

It is also very ironic; here we are today considering the regulatory reform bill to make the regulatory process more efficient with more information, with risk assessment and cost-benefit analysis. If the Lautenberg amendment does not pass, we are saying less information is better. We are saying that the public does not have a right to know what toxic chemicals are being released. It makes no sense.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BAUCUS. Mr. President, if the Senator will yield 1 more minute. I have used 1 minute of the Senator's time.

Mr. LAUTENBERG. Certainly. I will be happy to yield another minute to my friend from Montana.

Mr. BAUCUS. Mr. President, again, just to say what this amendment does, currently a chemical is listed if it has acute, or chronic health or environmental effects. The bill before us says, in addition to knowing the toxic effects of the chemical, you have to show how much of the chemical is actually being released and if that release will result in harmful effects. And you have to show this before it is listed on the TRI. It is a catch-22. It cannot be done.

Second, Mr. President, the standard by which a chemical would be listed, that is required to be listed or not, is so vague no one can explain what the standard is. I have read this standard many, many times, over and over again. I do not know what it says. It is a lawyer's paradise. This provision is going to be tremendously litigated. And I just again urge Senators to pass the Lautenberg amendment, which deletes a substantive provision which the public very much desires as the right to know which chemicals are being emitted into the atmosphere.

And I thank the Senator.

The PRESIDING OFFICER. The Senator's time is expired.

Mr. LAUTENBERG. Mr. President, it is my understanding that the Senator from Mississippi was going to be here at—was that 8?

The PRESIDING OFFICER. In response to the Senator from New Jersey, no time had been set. We do have 1 minute remaining under the control of the Senator from Wisconsin.

Mr. LAUTENBERG. I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware——

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DOLE. I wonder if we could go into a quorum call, if we are waiting for Senator LOTT. Is that it?

Mr. ROTH. And Senator HATCH.

Mr. DOLE. Maybe the Senator from Wisconsin could use some of his time while we are waiting on that.

Mr. FEINGOLD. It is my understanding this side still has 10 minutes.

The PRESIDING OFFICER. The Senator from Delaware has 11 minutes, 35 seconds.

Mr. FEINGOLD. I only have 1 minute remaining. If there is going to be any opposition, I would like to reserve that for a response.

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PRYOR addressed the Chair.

The PRESIDING OFFICER (Mr. DEWINE). The Senator from Arkansas is recognized.

Mr. PRYOR. Mr. President, in order to move things along here, I am going to make this suggestion that we lay the pending amendment aside. And I assume that is the amendment just offered by the Senator from Wisconsin, and that I be allowed to, in the sequencing order, present my amendment; and upon completion of my amendment, we will return to the amendment offered by the Senator from Wisconsin and proceed from there. I think that might expedite our time.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

AMENDMENT NO. 1537 TO AMENDMENT NO. 1487

(Purpose: To prevent conflicts of interest of persons entering into contracts relating to cost-benefit analyses and risk assessments, and for other purposes)

Mr. PRYOR. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Arkansas [Mr. PRYOR] for himself and Mr. FEINGOLD, proposes an amendment numbered 1537 to amendment No. 1487.

Mr. PRYOR. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in the substitute amendment, insert the following new section:

SEC. . CONFLICT OF INTEREST RELATING TO COST-BENEFIT ANALYSES AND RISK ASSESSMENTS.

(a) INFORMATION BEARING ON POSSIBLE CONFLICT OF INTEREST.—

(1) DEFINITION.—For purposes of this section, the term ''contract'' means any contract, agreement, or other arrangement, whether by competitive bid or negotiation, entered into with a Federal Agency for any cost-benefit analysis or risk assessment under subchapter II or III of chapter 6 of title 5, United States Code (as added by section 4(a) of this Act).

(2) IN GENERAL.—This section shall not apply to the provision of section 633(g), when an agency proposes to enter into a contract with a person or entity, such person shall provide to the agency before entering into such contract all relevant information, as

determined by the agency, bearing on whether that person has a possible conflict of interest with respect to being able to render impartial, technically sound, or objective assistance or advice in light of other activities or relationships with other persons.

(3) SUBCONTRACTOR INFORMATION.—A person entering into a contract shall ensure, in accordance with regulations prescribed by the head of the agency, compliance with this section by any subcontractor (other than a supply subcontractor) of such person in the case of any subcontract of more than $10,000.

(b) REQUIRED FINDING THAT NO CONFLICT OF INTEREST EXISTS OR THAT CONFLICTS HAVE BEEN AVOIDED; MITIGATION OF CONFLICT WHEN CONFLICT IS UNAVOIDABLE.—

(1) IN GENERAL.—Subject to paragraph (2), the head of an agency shall not enter into any contract unless the agency head finds, after evaluating all information provided under subsection (a) and any other information otherwise made available that—

(A) it is unlikely that a conflict of interest would exist; or

(B) such conflict has been avoided after appropriate conditions have been included in such contract.

(2) EXCEPTION.—If the head of an agency determines that a conflict of interest exists and that such conflict of interest cannot be avoided by including appropriate conditions in the contract, the agency head may enter into such contract if the agency head—

(A) determines that it is in the best interests of the United States to enter into the contract; and

(B) includes appropriate conditions in such contract to mitigate such conflict.

(c) RULES AND REGULATIONS.—No later than 240 days after the date of the enactment of this Act, the Federal Acquisition Review Council shall publish rules for the implementation of this section, in accordance with section 553 of title 5, United States Code, without regard to subsection (a) of such section.

Mr. PRYOR. Mr. President, I have only a very few moments. This is a very simple amendment that I am offering tonight. This basically is an amendment concerning Federal agencies which use private contractors to perform cost-benefit analyses and risk assessments.

Mr. President, one of my main concerns about the bill that we are considering is that it is going to place additional burdens upon the Federal agencies during a period of downsizing of the number of Federal employees. Should S. 343 become law, the respective agencies throughout the Federal Government are going to have to reorder their priorities to allow them to devote a large portion of their resources to cost-benefit analysis, risk assessment, and regulation review. As the Government continues to downsize in the future, Mr. President, the Federal agencies are going to increasingly turn to private contractors to carry out the tasks of government.

As my colleagues know, I have long been concerned with the use of private contractors in the Federal Government. During my years in the Senate, I have sought to shed light on the increasing role of private contractors and the possible conflict of interest involved with their use.

This is no new issue. In 1980, for example, the General Accounting Office examined 156 contracts for regulatory analysis alone and found that 101 of these 156 contracts had a conflict of interest situation. Because S. 343 will likely increase the use of private contractors to conduct regulatory analysis for the Federal Government, I believe that this conflict of interest problem cannot and should not be ignored.

Mr. President, to illustrate the potential for conflict of interest, one need only look at the promotional materials published by a few of the private contractors who have contracts with the Federal Government. For example, Mr. President, one of these contractors is a firm known as P.R.C. In 1990 the P.R.C. company, a consulting company, had four contracts worth $220 million with the Environmental Protection Agency.

Here is their promotional material. This material proclaims to the possible user of their services, and I quote, ''Under contract to the United States EPA, P.R.C. has conducted hundreds of regulatory compliance inspections giving us indepth experience with what regulators are looking for.''

How then, Mr. President, can this particular company be a company that states that they have no bias and that they have no conflict of interest?

Here is another company, Mr. President. This particular company is another major contractor with the Environmental Protection Agency. In 1990–1991, they had 13 contracts worth over $100 million with the Environmental Protection Agency. They boast to potential users of their services, in their very beautiful brochure—this is called The Weston Managers Design Consulting Company—I quote, ''In daily practice, the Weston philosophy has encouraged us to develop and maintain an objective, professional posture relative to public issues so that we can represent either''—and I quote—''the regulated or the regulator.'' So that we can represent either the regulated or the regulator.

How fair, how objective and how free from conflicts of interest, Mr. President, can a firm be when it is working both sides of the street?

Here is another firm, Mr. President, who has millions of dollars of contracts with the Federal Government today, the ICF Co. Their brochure is entitled: ''Environment and Energy.''

They list their clients. For example, some of ICF's clients are: Ashland Chemical; Cedar Chemical; Chemical Waste Management; Chevron; Dow Chemical, SCA Chemical Services; Union Carbide; and Vertec.

Now they also list the Government agencies that they work for: the Department of Commerce; the Department of Defense; the Department of Energy; and, yes, Mr. President, the Environmental Protection Agency.

My amendment says that if granting one of these contracts to a company doing business with the Government creates a conflict of interest, then the agency head has the opportunity to publish notice of the conflict in the Federal Register. This can make us aware that the contract has the potential of a conflict, could be printed in the Federal Register and give us fair and just warning of the potential that might exist for a contract.

It would require agencies to gather certain information from its contractors that will allow agencies to determine if a conflict of interest actually exists. It would not, Mr. President, prohibit the agency, under certain circumstances, from hiring a contractor, even if a conflict of interest was found.

My amendment simply sheds sunlight on the process by ensuring that the agency has considered possible conflicts so that the public is assured that potential conflicts of interest are not subverting public policy due to hidden bias in the regulatory analyses process.

Mr. President, I want to thank the distinguished Senator from Wisconsin for being an original cosponsor of this amendment that is now before the Senate.

I reserve the remainder of my time, and I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Delaware has 15 minutes.

Mr. ROTH. Mr. President, I yield 1 minute to my distinguished colleague.

Mr. GLENN. I thank my friend from Delaware. I just want to speak in behalf of Senator PRYOR. I just want to say, there is no one on the Governmental Affairs Committee who has done more work and stuck with the idea of looking into outside contracting, making sure it was not excessive, cutting down the number of contracts where we go out and pay for very expensive contracts that we should be doing in Government itself. He has been following this subject for a number of years and bird-dogging that. He deserves a lot of credit for it, and I think the amendment he is bringing up this evening is an example of making sure that when we do contract out, that it is done legitimately and without conflict of interest and without any taint. It is that kind of thing that happens too often in Government which gives Government a bad name.

He has been determined for many years to root this out. I want to compliment him for it, and I am glad to be supporting his amendment.

I thank my friend from Delaware.

Mr. ROTH. Mr. President, I have to say to my distinguished friend from Ohio, he stole the words out of my mouth. I was going to also comment on the excellence and the persistence with which the distinguished Senator from Arkansas has pursued the problem of conflict of interest.

I would like to ask my distinguished friend one question. In S. 343, in connection with peer review, it is provided that in peer review, that

shall not exclude any person with substantial and relevant expertise as a participant on the basis that such a person has a potential interest in the outcome if such interest

is fully disclosed to the agency and the agency includes such disclosure as part of the record, unless the result of the review would have a direct and predictable effect on a substantial financial interest of such person.

It is my understanding that your amendment has no effect or impact on that section; is that correct?

Mr. PRYOR. Mr. President, let me respond to my friend from Delaware by stating, in the original draft of the amendment, we did not specifically exclude peer review. However, in the latest draft, which is pending before the Senate, we now have a sentence that states:

This section shall not apply to provisions of section 633(g) . . .

And I believe that is the peer review section. So peer review is not in any way involved in this proposal that I am submitting. I thank the Senator for asking that clarifying question.

Mr. ROTH. That was my understanding, and I appreciate the answer.

I am prepared to accept the amendment, and I yield back the remainder of my time.

Mr. GLENN. I will be happy to accept on our side also.

Mr. PRYOR. Mr. President, if I may say just a word in thanks to the Senator from Ohio and the Senator from Delaware, two extremely capable Senators that I have had the privilege of working with in the Senate, more specifically in the Governmental Affairs Committee, for a lot of years. I want to thank them for their endorsement, their kind words, patience and perseverance and for them accepting this amendment, endorsing it. I will always be grateful.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Is all time yielded back?

Mr. ROTH. I yield back the remainder of my time.

Mr. PRYOR. I yield back all time.

The PRESIDING OFFICER. All time has been yielded back. The question is on agreeing to the amendment No. 1537.

So the amendment (No. 1537) was agreed to.

Mr. ROTH. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GLENN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senator from Texas was to offer the next amendment. The Senator from Texas is apparently not here. Therefore, under the previous order, the Senator from Wisconsin is now recognized to offer his second amendment. The Senator from Wisconsin.

AMENDMENT NO. 1538 TO AMENDMENT NO. 1487

(Purpose: To provide that an agency may include any person with substantial and relevant expertise to participate on a peer review panel)

Mr. FEINGOLD. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD] for himself and Mr. PRYOR, proposes an amendment numbered 1538 to amendment No. 1487.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 57, strike out line 18 through line 25 and insert in lieu thereof the following:

''(B) may exclude any person with substantial and relevant expertise as a participant on the basis that such person has a potential financial interest in the outcome, or may include such person if such interest is fully disclosed to the agency, and the agency includes such disclosure as part of the record, unless the result of the review would have a direct and predictable effect on a substantial financial interest of such person:

Mr. FEINGOLD. Mr. President, there are many principles I can support in the Dole-Johnston legislation, but I do have a serious concern about part of the peer review proposal. It is not one of the larger issues at work here, but it is one I feel could have a great deal of impact on the integrity and credibility of the Federal regulatory process.

Section 633 of the Dole-Johnston legislation includes a provision that requires the Federal agencies to develop a systematic program for balanced, independent and external peer review that is to be utilized to review the scientific risk assessments performed under the requirements of the legislation.

I understand that several Senators have serious concerns about the larger issue of peer review and how it is treated in this legislation. There may be a broader amendment offered on that later, though. But the concern of this particular amendment has to do with the few lines contained in the peer review section of the bill that will put new guidelines and requirements on Federal agencies as they go about determining who will serve and who will not serve on these peer review panels.

It is my understanding that, periodically, a Federal agency is faced with a situation where an individual has been selected as a possible peer reviewer and later it is learned that the individual may stand to benefit financially, depending on the outcome of that particular peer review.

For example, the person might be a scientist under the employment of a company or industry that has a considerable financial interest that is dependent on the outcome of the review. That is a conflict of interest, and the type that I understand is not all that uncommon of an occurrence in our regulatory process. It is kind of important to understand how current law operates with respect to these kinds of situations.

Mr. President, under current law, the agencies have the discretion to determine if someone with a direct conflict of interest should be able to serve on a peer review. As I said, this is permitted sometimes because there are instances where it may be appropriate and necessary to allow individuals with conflicts of interest to serve on a particular peer review panel.

However, the Dole-Johnston legislation would go further. It would actually usurp the discretion currently enjoyed by the agencies and expressly state that an agency cannot actually disqualify someone merely because they may stand to benefit financially from the outcome of the review. This language is on page 57 of the bill.

There are three effects of this section. The first effect—the one I am trying to amend—is that an agency will no longer have the discretion to determine on their own whether an individual with a conflict of interest should or should not be permitted to serve on the panel. The second effect is that should an individual have a conflict of interest, the individual must be permitted to serve on the peer review panel so long as the conflict of interest is disclosed and is made part of the record. The result of this is, I believe, at least an improvement that you are going to have the disclosure.

I credit the folks that put this together in that regard. But there is an area where I think the agencies should have discretion. The bottom line is that if someone has a conflict of interest and is serving on a panel, that should be part of the record.

But there is a further effect. The third effect of the Dole-Johnston language is that the only instance where an agency could exclude an individual with a conflict of interest is in the very narrow situation where the result of the review would have a direct and predictable effect on a substantial financial interest of such person.

Now, what is a direct and predictable effect? That is a good question. Under current law, agency officials would be permitted to take a close look at this case and determine if there was enough cause placed on the ties of the individual and the industry being regulated to perhaps exclude the individual from the peer review panel. But under this legislation, as it now stands, the only instance in which an agency could exclude such an individual is to establish that the individual would predictably and directly benefit from the outcome of the peer review panel.

The fact is that not all financial benefits are predictable and/or direct. The amendment I am now offering will change the Dole-Johnston language on this issue so that agencies will be allowed to continue to employ peer reviewers with a conflict of interest, at their own discretion, provided that the conflict of interest is disclosed and made part of the record.

So the agencies would continue to be allowed to determine on their own when it is appropriate or not to allow someone with a conflict of interest to serve on a review panel. However,

should the agency decide to allow such an individual to serve on a review panel, my amendment would make it mandatory for the conflict of interest to be disclosed and be made a part of the record.

Finally, my amendment makes clear that there is just one circumstance in which the agencies will have no discretion as to who can be included or excluded from serving, and that in the situation I mentioned before, where a potential peer reviewer will directly and predictably benefit from the outcome of the review. In that case, the agency has to exclude the person. I am afraid that the Dole-Johnston bill, as currently written, will undermine the part of the regulatory process that is responsible for ensuring that risk assessments are performed in an objective and impartial manner.

My amendment is strongly supported by the Clinton administration.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 1 minute 53 seconds.

Mr. FEINGOLD. In short, let me say that my amendment preserves what works in current law and combines it with the progressive disclosure requirements of the Dole-Johnston bill. This will ensure that we have a review process that is fair, equitable and free from any unnecessary influence from the industries and entities that are the subject of the regulation.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. Under the previous order, the Senator from Delaware has 7½ minutes.

Mr. ROTH. We have just received the language of the distinguished Senator's amendment. I would like to address some questions to the Senator from Wisconsin. As I understand, you are striking out the words, ''shall not exclude'' and inserting in lieu thereof, ''shall permit the agency to include.''

Now, it is my understanding that your amendment would allow an agency to include an individual on a peer review panel that may have an interest in the outcome of the review, is that correct?

Mr. FEINGOLD. Mr. President, if I may respond, the version that we have submitted is different than the one the Senator has before him. The language we have submitted indicates the following:

> The agency may exclude any person with substantial and relevant expertise as a participant on the basis that such person has a potential financial interest in the outcome, or may include. . .

So the agency is allowed the option of either including or excluding a person who has a conflict of interest in the version we sent up to the desk.

Mr. ROTH. We apparently do not have a copy of that version of the amendment.

Mr. President, I regret to say that we just received this modified language, and we have not had an opportunity to study this matter to determine exactly what its implications may be. So if it is all right with the leader, I think maybe we ought to set this aside for a moment so that we will have the opportunity to review the language and then proceed.

Instead of that, Mr. President, I suggest the absence of a quorum, and I ask unanimous consent that the time not be counted against either side.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JOHNSTON. Mr. President, while we are waiting, I have two amendments here that have been cleared. One is proposed by Mr. BAUCUS and myself.

It would change ''shall'' to ''may'' in that provision of the bill that states that the authorizing committee may submit to the Appropriations Committee changes in the schedule, and that the Appropriations Committee then—now it reads ''shall propose those amendments to the Senate.'' And we want to change that ''shall'' to ''may.''

Mr. ROTH. Mr. President, parliamentary inquiry. Can the distinguished Senator from Louisiana say what he is proposing at this time?

Mr. JOHNSTON. I have not proposed it yet. I am proposing an amendment that I thought had been cleared on all sides. It changes—

Mr. ROTH. I have not seen it, and we are looking at another amendment at this time.

Mr. JOHNSTON. I thought it had been cleared.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROTH. Mr. President, let me point out that there is absolutely no intention in S. 343 to undermine the integrity of the peer review process.

While I think the concerns of Senator FEINGOLD are unwarranted, I believe that we are willing to accept the amendment.

As I understand the amendment, the Senator is first saying that we may exclude any person with substantial and relevant expertise as a participant, on the basis that such a person has a potential financial interest in the outcome. But the Senator is also providing that such person may be included if his interest is fully disclosed to the agency and the agency includes such disclosure as part of the record.

So, as I understand it, the Senator is trying to be more evenhanded on the matter. Is that correct?

Mr. FEINGOLD. Mr. President, that is correct.

I want to be fair and make it clear, there is only one exception to that. That would require that the agency not be allowed to let the person stay on in the case where the result would have a direct, predictable effect. So a more extreme case, there is no discretion, but we restore the discretion in the more common conflict-of-interest case. That provision is in the Dole-Johnston provision.

Mr. GLENN. Mr. President, as I understand it, this would add some judgment to it. This would let the agency have leeway in determining a balance, and keep the expertise.

I believe that is the intent. I am happy to accept it on our side.

Mr. FEINGOLD. I thank the Senator.

Mr. ROTH. Mr. President, I am willing to accept the amendment and yield back the remainder of my time.

Mr. FEINGOLD. I thank the Senator from Delaware, and I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment No. 1538.

The amendment (No. 1538) was agreed to.

Mr. GLENN. I move to reconsider the vote by which the amendment was agreed to.

Mr. HATCH. I move to table the motion.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1536

The PRESIDING OFFICER. There are 8 minutes remaining on the debate on Amendment 1536.

The PRESIDING OFFICER. The Senator from Wisconsin has 1 minute remaining.

Mr. FEINGOLD. Mr. President, I yield back my remaining time.

Mr. HATCH. Mr. President, I would like to be clear that we have accepted Senator FEINGOLD's amendment on the Equal Access to Justice Act with reluctance. This is a controversial matter and I still have many concerns. However, as a show of good faith and willingness to work with the distinguished Senator from Wisconsin in the future, we have allowed his amendment to pass without comment at this time.

The PRESIDING OFFICER. The question is on agreeing to the amendment No. 1536.

The amendment (No. 1536) was agreed to.

Mr. ROTH. I move to reconsider the vote by which the amendment was agreed to.

Mr. GLENN. Mr. President, I move to table the motion.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1535

The PRESIDING OFFICER. The question is on agreeing to the amendment No. 1535. Sixteen minutes remain on the debate.

Mr. DOLE. Mr. President, as I understand it, we had four amendments. We have accepted the two Feingold amendments and the Pryor amendment,

which leaves the Lautenberg amendment.

Mr. President, I understand the Senator from Mississippi, Senator LOTT, will be here momentarily. He has 13 minutes. The Senator from New Jersey has 3 minutes. If he is not here momentarily, we will yield back his time. Then I will move to table the Lautenberg amendment.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Mississippi has 7 minutes remaining. The Senator from New Jersey has 3 minutes remaining.

Mr. FORD. Mr. President, may we have order, please?

The PRESIDING OFFICER. The Senator will suspend.

The Senator from Mississippi.

Mr. LOTT. Mr. President, after that 10 minutes, then we would be prepared to go to a vote on the pending Lautenberg amendment; is that correct?

The PRESIDING OFFICER. After all time is expired.

If the Senator will suspend, Members who are conversing in the aisle will take their conversations to the cloakroom.

The Senator from Mississippi.

Mr. LOTT. Mr. President, I will be heard tonight in this brief time we have remaining against the Lautenberg amendment. I understand, after the remarks have been made in the next 8 minutes, there will be a motion to table this amendment.

The Lautenberg amendment would strike the provision in the legislation to reform the current petition process regarding adding or deleting chemicals on the Toxic Release Inventory referred to as TRI. The TRI is a list of chemicals emitted by industrial facilities.

Mr. LAUTENBERG. Mr. President, can we have order, please? It is hard to hear the Senator from Mississippi.

The PRESIDING OFFICER. The Senator will suspend.

The Senator from Mississippi.

Mr. LOTT. The TRI is a list of chemicals emitted by industrial facilities as required by the Emergency Planning and Community Right to Know Act of 1986. The current TRI language in S. 343, which was worked out with the distinguished Senator from Louisiana, does not add a new petition process.

The language merely strengthens the current TRI language to require that the Administrator of the EPA ''shall grant any petition that establishes substantial evidence that the criteria already in the TRI law either are or are not met.''

As we have gone through this process in the last few days, we have continued, in my opinion, to make changes that are not strengthening the bill. I am not questioning anybody's motives or characterizing the amendments. There has continued to be a process that I think is not strengthening this legislation.

I want to urge my colleagues here tonight to defeat this amendment. What we are talking about here is sound science. That is all we are trying to do with their TRI provision. To make this process to involve reasonable, sound science, a responsible threshold should be used as the standard upon which TRI informs and protects the public.

Having said that, what will this toxics release inventory provision in the bill not do? I want to emphasize that.

The language in the bill has several important, positive features. But it will not automatically remove any chemical currently listed. It will not remove any of the existing criteria for listing. It will not prevent further listings of chemicals. It will not repeal the Community Right-to-Know Act. It will not require a new and costly risk assessment. It will not require a lengthy elaborate cost-benefit analysis.

There is a long list of things that this will not do. It will not undermine this law.

It will require that EPA prove the chemical is a genuine risk before it is listed. The provision will not affect the basic integrity of this program.

In fact, I would assert that it enhances the credibility of the TRI listing by only identifying carcinogens that based on reasonable and expected exposure scenarios will present genuine risk to Americans.

I, along with my colleagues who have worked on this, feel that TRI is an important and useful statute and should be preserved.

The change though is focused and directed at only one aspect of the statute. There are three types of listings within this TRI.

The first deals with really nasty chemicals; the second concerns carcinogens; and a third deals with chemicals causing environmental problems.

Nothing is proposed to change listing or delisting standards for the really nasty chemicals, the bad chemicals, we all agree should be identified and listed.

However, a new criteria is combined with the existing standard for listing in the two remaining categories.

A factor which concerns possible exposure by the public in dosages which are hazardous will be added to existing criteria.

This improves a TRI listing by providing the public with accurate and more complete information while avoiding unnecessarily alarming the public.

If a chemical is not toxic in any scientific sense, why grossly mislead the public and divert resources to this nonrisk?

This, in my opinion, is a regulatory abuse, the kind of thing we have been talking about and debating back and forth all week.

I believe the American public has a right to complete and accurate information. They should not be given incomplete or politicized misinformation.

Those who want to remove this provision, in my opinion, are not enhancing the protection offered. In fact, while it is not their intent, it may actually lead to misleading information.

When Congress passed the Right-to-Know Act in 1986, it did not envision that EPA would only consider wild scenarios. But after nearly a decade of considering just these type of scenarios, it has come time I think for Congress to deal with some of the actions that EPA has been taking. And there is one area where we really need it. Let me read what EPA itself has said in its own words. It says there is—

> . . . some confusion about roles and the relationship of emissions inventory, hazard assessment, exposure assessment and risk assessment in the development of the TRI listings and subsequent uses of the TRI data . . . sometimes misinterpreted to imply that they are direct measurements of exposure and risk.

This came from EPA's own Science Advisory Board in a letter to Carol Browner just 5 months ago.

I believe Americans will benefit by a more accurate and valid TRI listing. However, there are those who want to perpetuate a process which misleads as to the risks that are involved and ignoring scientific common sense.

I firmly believe that the additional standard will make TRI more accountable, and I urge that the amendment to delete this language in the bill be defeated.

I yield the floor, Mr. President.

Mr. JOHNSTON. Will the Senator yield?

Mr. LOTT. I yield whatever time I might have for a question.

Mr. JOHNSTON. Mr. President, I was going to say under the present law the EPA interprets its statute, or feels it must interpret their statute, in such a way as to have no discretion if there is a chemical which is known to cause chronic health effects. Ordinary table solvent, mentioned earlier, can cause chronic health effects, hypertension, poison, et cetera. They have not listed that chemical solvent. But they feel that they have no discretion if it causes that, and they have to list those kind of chemicals.

All we want to do is put ''the rule of reason'' in interpreting those rules. Is that is correct?

Mr. LOTT. That is correct. I thank the Senator.

Mr. LAUTENBERG. Mr. President, I want to point out one thing before we respond directly.

The PRESIDING OFFICER. Will Members standing and talking carry their conversations to the cloakroom?

Mr. LAUTENBERG. I thank you, Mr. President. It is the end of a long day. People are restless. But we have an important matter to settle here.

The fact of the matter is that this has been a very successful program. We have reduced in 5 years 40 percent of the toxic materials emitted. We have go from 4.8 billion pounds a year down to 2.8 billion pounds a year, a reduction of 2 billion pounds being released into the atmosphere, the water, the land, whatever waste stream the company chooses.

Why is it necessary to change it? Mr. President, it is obvious to me. It is necessary to change it to accommodate someone who does not like the chemical that is listed there. We are not talking about chewing gum here. We are talking about chemicals that now are listed as chronic. These chemicals can cause cancer, teratogenic defects, serious or irreversible reproductive dysfunctions, neurological disorders, heritable genetic mutations, and other chronic health effects.

What the Senator from Mississippi wants to do is say unless two-thirds of this list—that is the reality—meet the acute test that none of those conditions that I just mentioned should permit those materials to be listed.

These are toxics that are listed here. I would submit to you that it would be a pity to say to the American public that we are taking away the sunshine. We ask you now to accept the ''right to know''—not go from the ''right to know'' to the ''right to know nothing.'' It is a law that has very little demand. All they have to do—the manufacturer, the transports—is list the chemicals that you emit into the air, list the chemicals that you emit into the water; list the toxics that you store in wasteland fills.

Mr. President, there is very little here that has a negative effect. We have reduced the amount of exposure that our people have to suffer. The thing works well. To leave it there now when this is not a matter of regulation—this is a matter of governance. I think it would be a mistake honestly to continue to leave the language in there that would eliminate a program that has been very, very successful. If we are going to eliminate it, it ought to be through the process of hearings and committees and the legislative process instead of sweeping it all under the pretense that we are making regulation and making life easier for our citizens.

As a matter of fact, it makes life considerably more hazardous.

I yield the floor, Mr. President, and hope that my colleagues will not agree to tabling this amendment.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. All time has expired.

The majority leader.

Mr. DOLE. I move to table the amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DOLE. Mr. President, let me indicate to my colleagues this will be the only vote tonight because we were able to take three of the amendments, the PRYOR amendment, and two Feingold amendments we were able to work out and accept. So there will just be this one vote.

As I understand, Senator HUTCHISON may be prepared to offer her amendment, at least the debate tonight on her amendment. Is that correct?

Mrs. HUTCHISON. We are almost there. Maybe after the vote.

Mr. DOLE. That is a possibility. So we would like, if we could do that tonight, to finish the debate on the Hutchison amendment, and then we would have a vote on that tomorrow morning. But we would have that vote at the same time we have a vote on the Glenn amendment, which will be around 11 a.m.

Mr. JOHNSTON. At 11:15.

Mr. DOLE. Whatever. If all time is used. I do not think we need 2 hours for sunshine.

In any event, I just advise Members this is the last vote tonight.

There will be votes tomorrow throughout the day, and I would tell my colleagues the first vote will probably be around 10:45, 11:00, 11:15 in the morning.

The PRESIDING OFFICER. The question is on agreeing to table the Amendment No. 1535. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from New Mexico [Mr. BINGAMAN] and the Senator from Nebraska [Mr. KERREY] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 50, nays 48, as follows:

[Rollcall Vote No. 306 Leg.]

YEAS—50

Abraham	Frist	McCain
Ashcroft	Gorton	McConnell
Bennett	Gramm	Murkowski
Bond	Grams	Nickles
Breaux	Grassley	Packwood
Brown	Gregg	Pressler
Burns	Hatch	Santorum
Campbell	Hatfield	Shelby
Coats	Heflin	Simpson
Cochran	Helms	Smith
Coverdell	Hutchison	Specter
Craig	Inhofe	Stevens
D'Amato	Johnston	Thomas
DeWine	Kempthorne	Thompson
Dole	Kyl	Thurmond
Domenici	Lott	Warner
Faircloth	Mack	

NAYS—48

Akaka	Feinstein	Lugar
Baucus	Ford	Mikulski
Biden	Glenn	Moseley-Braun
Boxer	Graham	Moynihan
Bradley	Harkin	Murray
Bryan	Hollings	Nunn
Bumpers	Inouye	Pell
Byrd	Jeffords	Pryor
Chafee	Kassebaum	Reid
Cohen	Kennedy	Robb
Conrad	Kerry	Rockefeller
Daschle	Kohl	Roth
Dodd	Lautenberg	Sarbanes
Dorgan	Leahy	Simon
Exon	Levin	Snowe
Feingold	Lieberman	Wellstone

NOT VOTING—2

Bingaman Kerrey

So the motion to table the amendment (No. 1535) was agreed to.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the motion was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GLENN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, I ask unanimous consent that the distinguished Senator from Texas be permitted to offer her amendment, lay it down, and it will become the pending business when we come back in tomorrow. Tonight we will set it aside for the Glenn amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 1539 TO AMENDMENT NO. 1487

(Purpose: To protect against the unfair imposition of civil or criminal penalties for the alleged violation of rules)

Mrs. HUTCHISON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Texas [Mrs. HUTCHISON], for herself, Mr. HEFLIN, Mr. HATCH, Mr. NICKLES, Mr. CRAIG, and Mr. LOTT, proposes an amendment numbered 1539 to amendment No. 1487.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Insert at the appropriate place:

''SEC. 709. AGENCY INTERPRETATIONS IN CIVIL AND CRIMINAL ACTIONS.

''(a) No civil or criminal penalty shall be imposed by a court, and no civil administrative penalty shall be imposed by an agency, for the violation of a rule—

''(1) if the court or agency, as appropriate, finds that the rule failed to give the defendant fair warning of the conduct that the rule prohibits or requires; or

''(A) reasonably in good faith determined, based upon the language of the rule published in the Federal Register, that the defendant was in compliance with, exempt from, or otherwise not subject to, the requirements of the rule; or

''(B) engaged in the conduct alleged to violate the rule in reliance upon a written statement issued by an appropriate agency official, or by an appropriate official of a State authority to which had been delegated responsibility for implementing or ensuring compliance with the rule, stating that the action complied with, or that the defendant was exempt from, or otherwise not subject to, the requirements of the rule.

''(b) In an action brought to impose a civil or criminal penalty for the violation of a rule, the court, or an agency, as appropriate, shall not give deference to any interpretation of such rule relied on by an agency in the action that had not been timely published in the Federal Register or communicated to the defendant by the method described in paragraph (a)(2)(B) in a timely manner by the agency, or by a state official described in paragraph (a)(2)(B), prior to the commencement of the alleged violation.

''(c) Except as provided in subsection (d), no agency shall bring any judicial or administrative action to impose a civil or criminal penalty based upon—

''(1) an interpretation of a statute, rule, guidance, agency statement of policy, or license requirement or condition, or

''(2) a written determination of fact made by an appropriate agency official, or state official as described in paragraph (a)(2)(B), after disclosure of the material facts at the time and appropriate review,

if such interpretation or determination is materially different from a prior interpretation or determination made by the agency or the state official described in (a)(2)(B), and if such person, having taken into account all information that was reasonably available at the time of the original interpretation or determination, reasonably relied in good faith upon the prior interpretation or determination.

''(d) Nothing in this section shall be construed to preclude an agency:

''(1) from revising a rule or changing its interpretation of a rule in accordance with sections 552 and 553 of this title, and, subject to the provisions of this section, prospectively enforcing the requirements of such rule as revised or reinterpreted and imposing or seeking a civil or criminal penalty for any subsequent violation of such rule as revised or reinterpreted.

''(2) from making a new determination of fact, and based upon such determination, prospectively applying a particular legal requirement;

''(e) This section shall apply to any action for which a final unappealable judicial order has not been issued prior to the effective date.

Mrs. HUTCHISON. Mr. President, I offer this amendment on behalf of Senators HEFLIN, HATCH, NICKLES, CRAIG, and LOTT, as well as myself. It is the Hutchison-Heflin amendment.

Mr. President, this is an amendment that we will debate tomorrow. It is an amendment that is going to try to put into the Administrative Procedure Act parameters that would not allow an agency to retroactively penalize a business that does not have reasonable notice of a regulation. So I think it is going to be an important amendment. I think we will have good bipartisan support for it.

I ask unanimous consent that we lay it aside.

Mr. GLENN. Reserving the right to object, and I will not object. In the original version of this that we asked the Department of Justice to check out they had objections, and the only reason we cannot debate it tonight is there have been substantial changes made to the original, as I understand it. We are asking Justice to give us an overnight read on those so we can bring it up tomorrow and see if the changes made were adequate, or whether we have to try and debate some change in that. That is the reason it will be put over until tomorrow. We are glad to accommodate the Senator from Texas on this.

Mrs. HUTCHISON. Yes. Mr. President, the Senator from Ohio is correct that there were objections. I think a number of those have been taken care of. I hope that by tomorrow, perhaps, we can have a short debate or even have an acceptance of the amendment. I feel that we have addressed many of the concerns in that letter. So we can take it up tomorrow and go from there.

Mr. HATCH. Mr. President, I ask unanimous consent that the amendment be temporarily set aside so we can address the Glenn amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Mr. President, I want to announce to all Members of our body that we are going to dispose of the Glenn amendment tonight.

Therefore, we could have votes before 11 tomorrow, I have been informed by the leader.

All Members should be aware we could have a vote or more.

Mr. JOHNSTON. Mr. President, will the Senator yield?

Mr. HATCH. I am happy to yield to the Senator.

Mr. JOHNSTON. Repeat that please.

Mr. HATCH. Because we are going to accept the Glenn amendment tonight, and the Hutchison amendment is laid down, Members should become aware that we could have votes before 11 tomorrow.

Mr. JOHNSTON. Mr. President, I have a longstanding doctor's appointment at 9 o'clock, and could be here by 10:30. Could the Senator help me on this? I can be here around 10:30. My guess is it would be hard to have a vote before 11, anyway.

Mr. JOHNSTON. The only amendment I know that might be ripe for a vote is possibly Hutchison.

Senator GLENN has 45 minutes in morning business.

Mr. HATCH. We will certainly try and accommodate the Senator. I cannot make that promise. We will do our best.

AMENDMENT NO. 1540 TO AMENDMENT NO. 1487

(Purpose: To ensure public accountability in the regulatory process by establishing ''sunshine'' procedures for regulatory review)

Mr. GLENN. On behalf of myself and Senator LEVIN, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Ohio [Mr. GLENN] for himself and Mr. LEVIN, proposes an amendment numbered 1540 to amendment No. 1487.

Mr. GLENN. I ask unanimous consent further reading be dispensed.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 66, after line 15, insert—

§643. Public disclosure of information

''(a) OMB RESPONSIBILITY.—The Director or other designated officer to whom authority is delegated under section 642, in carrying out the provisions of section 641, shall establish procedures (covering all employees of the Director or other designated officer) to provide public and agency access to information concerning regulatory review actions, including—

''(1) disclosure to the public on an ongoing basis of information regarding the status of regulatory actions undergoing review;

''(2) disclosure to the public, no later than publication of, or other substantive notice to the public concerning a regulatory action, of—

''(A) all written communications, regardless of form or format, including drafts of all proposals and associated analyses, between the Director or other designated officer and the regulatory agency;

''(B) all written communications, regardless of form or format, between the Director or other designated officer and any person not employed by the executive branch of the Federal Government relating to the substance of a regulatory action;

''(C) a record of all oral communications relating to the substance of a regulatory action between the Director or other designated officer and any person not employed by the executive branch of the Federal Government; and

''(D) a written explanation of any review action and the date of such action; and

''(3) disclosure to the regulatory agency, on a timely basis, of—

''(A) all written communications between the Director or other designated officer and any person who is not employed by the executive branch of the Federal Government;

''(B) a record of all oral communications, and an invitation to participate in meetings, relating to the substance of a regulatory action between the Director or other designated officer and any person not employed by the executive branch of the Federal Government; and

''(C) a written explanation of any review action taken concerning an agency regulatory action.

''(b) AGENCY RESPONSIBILITY.—The head of each agency shall—

''(1) disclose to the public the identification of any regulatory action undergoing review under this section and the date upon which such action was submitted for such review; and

''(2) describe in any applicable rulemaking notice the results of any review under this section, including an explanation of any significant changes made to the regulatory action as a consequence of the review.''.

On page 66, line 16, strike ''643'' and insert in lieu thereof ''644''.

On page 67, line 1, strike ''644'' and insert in lieu thereof ''645''.

Mr. GLENN. Mr. President, we have supported regulatory review in terms of cost-benefit analysis and OMB review of agency rules. During the 1980's, we had a lot of controversy about OMB interference with agency decisions, special access by lobbyists, and finally about secrecy in the Council on Competitiveness.

We, throughout all of this on the Governmental Affairs Committee, stood for open sunshine, nothing that was going to stop OMB review, and we wanted to introduce fairness.

The sunshine language in the GLENN-CHAFEE bill is consistent with the Clinton administration Executive order,

consistent with recommendations of the administrative conference of the U.S., also very similar to the OMB public disclosure procedures that Carl LEVIN, one of the cosponsors of this, negotiated with the Bush administration back in 1986.

We have a long history on this. We introduced sunshine legislation in several Congresses.

This year's language is a streamlined version of those bills, less strict, avoids criticism—like detailed logging requirements and early pre-rulemaking release of internal documents. Those requirements are not in this language.

But the provisions have two basic parts. First, OMB responsibilities, they must disclose to the public information about the status of rules under review. We need this to enforce the review time limits.

Two, OMB must release regulatory review documents and comments to agencies as they come in, and to the public; once a rule is proposed, agency and OMB analysis and other regular review documents are included and documents of people outside of government, records of conversations, meetings, review decisions.

The second part involves the responsibilities of the rulemaking agency. Each agency must keep a publication of rules under review at OMB. This matches the OMB lists and is needed to enforce the review time limits.

These requirements work. The Clinton administration abides by almost identical procedures now, and given past problems and requirements, the new regulatory reform bill, we should start with an open process.

I urge adoption of the amendment. It is my understanding that the other side has agreed to accept this amendment.

I am certain that Senator LEVIN, my cosponsor on this, who has done as much work in this area through the years as anybody in the Congress, and I am sure he has some remarks to make.

I am glad to yield the floor.

Mr. LEVIN. Mr. President, first let me thank my friend, the Senator from Ohio, for his tremendous leadership on this issue. He has kept at the forefront, and as a result we will adopt this very important amendment on openness tonight.

This issue began back in 1981 when President Reagan issued Executive order 12291, requiring review by the OMB, of all significant rules—proposed and final.

I favored Presidential oversight because I like accountability in the rulemaking process. But that process was being done behind closed doors. We could not even tell the public or find out if or when a rule was being reviewed by OMB. Only insiders with the right phone numbers on their rolodex knew what was going on.

We had hearing after hearing, document requests, battles in the press and on the Senate floor, over the critical issue of making the OMB review process subject to the same public disclosure requirements that we impose on rulemaking agencies.

It finally took a threat to shut down the dollars for OIRA, the Office of Information and Regulatory Affairs, the office in the OMB which conducts the review.

Now what we finally got was a policy from OIRA in 1986 from this administrator Wendy GRAMM in the form of the so-called GRAMM memo. That opened the door a bit, an important bit, and put written comments in a record of meetings in a public rulemaking file.

We still did not get the public's right-to-know if and when a rule was at OMB for review. But it was at that time, a big step forward.

The Clinton administration has issued a new Executive order in 1993 that provided an excellent process for making the OMB review process open to the public.

This bill, the bill now that is before the Senate for consideration, provides statutory authority for the President to review rules. It does not, however, provide for any of the openness requirements that we now have in the Executive order and for which we have worked so hard.

This amendment offered by the Senator from Ohio puts those disclosure requirements in law. It is an important amendment. There are also, these requirements in the Glenn-Chafee substitute, as there were in the ROTH bill as reported unanimously by the Governmental Affairs Committee.

Again, I want to thank the Senator from Ohio for his stalwart leadership on this openness issue.

Mr. JOHNSTON. Mr. President, I wonder if the Senator from Ohio would answer a couple of questions.

On page 2 of his amendment, on subsection (C) it states that there must be a record of all oral communications relating to the substance of a regulatory action between the director or other designated officer and any person not employed by the executive branch of the Federal Government, and then it also in subparagraph 3 on the same page talks about disclosure to the regulatory agency on a timely basis of a record of all communications, et cetera.

Now, my question is, does a record of all oral communications mean like a log of calls with a subject matter; or does that mean like a transcript or a summary of the substance of everything that is said?

Mr. GLENN. No, not a transcript. This would be rather, who called, and the general subject of the conversation.

Mr. JOHNSTON. Like I called you about this amendment. To satisfy that record, you would say the date; call from JOHNSTON; subject is sunshine amendment. Would that satisfy?

Mr. GLENN. Yes.

Mr. JOHNSTON. So, the Senator does not mean by a ''record,'' either a transcript or a summary, but name, date, time, subject matter.

Mr. GLENN. General subject, that is correct.

Mr. JOHNSTON. I thank the Senator.

Mr. GLENN. Mr. President, the amendment I am offering is required to provide sunshine during regulatory review. This amendment is needed to maintain public accountability and trust in government.

While not a central part of the regulatory reform legislation, the bill's Executive oversight provisions ensure that compliance with the many requirements of the bill will be monitored and enforced through OMB regulatory review. This power must be exercised in the light of day.

We have had a lot of experience with OMB regulatory review over the last 15 years. While I think that that review is needed to ensure good cost-benefit analysis by the agencies, it should not be used for undisclosed lobbying, pressure, and delay. Unfortunately, it has been used for those things. We need to put sunshine procedures into law so that it will not happen again.

Let me review how we got to this point.

A key component of the regulatory process under the Administrative Procedure Act [APA] is the requirement that agencies must work to involve interested parties in the development of rulemaking decisions.

Agencies must give the public notice of its proposals, solicit comments on them, and consider those comments in making final rulemaking decisions. This public participation has always been key to protecting the integrity of government agency decisions. It has also been key to creating the agency record that is reviewed by a court upon a challenge to an agency's final rule decision.

These APA public participation principles were largely sufficient for many years. Over the last 20 years, however, the development of centralized regulatory review has created a new layer of decisionmaking, whereby agency regulatory proposals could be reviewed and changed before being published for public notice and comment.

This regulatory review process, which was created by Presidential Executive order, has been the driving force for cost-benefit analysis in agency rulemaking. I have always supported that purpose. In fact, it is the potential good that OMB has shown can be provided by cost-benefit analysis and risk assessment that brings us to debate the present legislation. We are building on OMB's regulatory review experience in an effort to place these requirements in law for all agencies. I support that purpose. And I am glad that OMB has been here over the years helping to develop the principles of cost-benefit analysis and risk assessment.

Unfortunately, the OMB regulatory review experience has not been without its problems. In addition to regulatory analysis, the OMB process is useful for simply coordinating policies among the

various agencies and ensuring consistency with Presidential priorities. While this, too, is a valid purpose, it proved a useful avenue for secret lobbying, political pressure on agencies, and delays of agency decisions. This is not what regulatory review should be about.

Congressional hearings over the last 10 years or more have highlighted complaints about OMB's role in regulations relating to infant formula, lead, ethylene oxide, drinking water, underground storage of toxic chemicals, grain dust, and more. Several court decisions have also focused on some of these cases.

The former OMB Director, Richard Darman, even testified before the Governmental Affairs Committee in 1989 that ''OMB had abused the process by using delay as a substantive tool'' to control agency decisions.

In 1991, our committee had many of the same complaints with regard to the Council on Competitiveness, which was chaired by Vice President Quayle, and was supervising the OMB regulatory review process. There were a lot of charges about secret lobbying a lot of refusals to disclose who was meeting with Council representatives on current regulatory proposals.

I do not believe the solution to these closed processes is to outlaw them. Regulatory review is useful and should not be curtailed. But it should be more open. With openness the process can go forward and the American people can be confident in knowing that no secret dealings are going on behind closed doors.

Through the years of our oversight in the Governmental Affairs Committee, there has been considerable disagreement in the committee about how much sunshine is needed and at what stages in the process. The committee has, however, always agreed on the need for sunshine and public confidence in the regulatory process. In the consideration of S. 291, Senator ROTH's regulatory reform bill that was supported unanimously by Democrats and Republican in our committee, we arrived at a set of requirements that were acceptable to all. They were reduced in scope from earlier proposals I have made. They are consistent with recommendations of the Administrative Conference of the United States and provisions in current regulatory review order (E.O. 12866). These provisions include openness procedures instituted by OMB in 1986.

In other words, while some past proposals have been criticized as too intrusive into the prerogatives of the Chief Executive, the sunshine provisions in S. 291 work without raising past concerns. There were no complaints in committee about intrusion into executive privilege. Past criticisms about forcing early disclosure of information during regulatory review was resolved by putting off disclosure until after the completion of regulatory review. Earlier complaints about undue administrative burden, such as detailed logging requirements, were also addressed by matching requirements to those currently employed by OMB.

The Glenn/Chafee bill, S. 1001, contains the exact sunshine provisions of S. 291. The amendment I offer today is almost identical to that language—it is only modified in order to fit into the structure of S. 343. Without this amendment, S. 343 has no public protections during regulatory review. I believe that is a fundamental flaw that needs to be addressed. I believe that our bipartisan Governmental Affairs sunshine provisions provide the needed solution.

The amendment has two sets of requirements—one for OMB, and one set for the rulemaking agencies.

First, OMB must disclose to the public information about the status of rules undergoing review. This means that the public should be able to learn from OMB what agency regulatory actions are under review. As a practical matter, this would entail the production of a single monthly listing of proposed rules under review—as OMB currently prepares pursuant to E.O. 12866. In this way, the legislation would merely create a statutory right to information now provided under Presidential Executive order.

Second, the public must have access, no later than the date of publication of the proposed or final rule, to: (A) Written communications exchanged between OMB and the rulemaking agency. These would include draft rules and related analyses; (B) Written communications between OMB and non-governmental parties relating to the substance of a rule; (C) A record of oral communications between OMB and non-governmental parties relating to the substance of a rule—as in, who called, when, and on what subject; and (D) A written explanation of any review action and the date of such action.

Each one of these requirements is currently the practice of OMB. Again, we expect that these requirements will entail the continuation of the current OMB practice of maintaining regulatory review files in a public reading room.

Third, as a counterpart to public disclosure, OMB is required to send relevant information to the rulemaking agency to ensure the compilation of a full and accurate rulemaking record. OMB must send to the agency: (A) Written communications between OMB and non-governmental parties; (B) A description of oral communications, and an invitation to participate in meetings, relating to the substance of a regulatory action between the reviewer and any person not employed by the executive branch of the Federal Government; and (C) A written explanation of any review action.

The second part of the amendment requires agencies to: First, give public notice about rules undergoing regulatory review; and second, describe regulatory review decisions in the relevant rulemaking notices.

With these procedures, we should be able to put behind us much of the rancor and criticism that dogged OMB regulatory review during the past 15 years. The Clinton administration has taken an important step in applying these procedures in its Executive order. The time is now for Congress also to close the book on this issue. We are taking a significant step forward in moving regulatory reform legislation and in order to be successful, it must be accompanied by sunshine.

Mr. HATCH. Mr. President, we do have some concerns about this amendment on this side. We have some constitutional concerns and some others.

We are willing to accept this amendment tonight on the basis that we continue to work with our distinguished colleague and friend from Ohio and others, and we are trying to accommodate over here. So we are prepared to accept the amendment if the Senator will urge it.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. GLENN. Mr. President, I urge adoption of the amendment.

THE PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 1540) was agreed to.

Mr. GLENN. Mr. President, I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. JOHNSTON. Mr. President, I wonder if the Senator will yield? May I ask my colleague if we have cleared the Heflin amendment yet? Senator HEFLIN wanted to make Section 706 of the APA applicable to appeals from the court of claims.

Mr. HATCH. It is my understanding it has not been cleared yet but it is being worked on.

MORNING BUSINESS

DETENTION OF HARRY WU

Mr. DOLE. Mr. President, by now most of America knows of the unjust detention of Harry Wu by the People's Republic of China. Harry Wu is an American citizen and human rights crusader. Since June 19, 1995, he has been detained in China. Consular access to detained American citizens is required to be granted within 48 hours under the terms of a 1982 agreement with China. But China did not grant access to Mr. Wu until July 10—21 days later. On July 9, Harry Wu was charged with offenses which could carry the death sentence.

Harry Wu was traveling on a valid American passport, with a valid Chinese visa. There seems little doubt that he was targeted by the Chinese Government for his outspoken and brave efforts to describe Chinese human rights

abuses. Mr. Wu himself suffered almost two decades of imprisonment in the Chinese gulag. His continued imprisonment is an affront to all freedom loving people.

Mr. President, our relationship with China is at a critical crossroads. Our relations with China are at the lowest point in years, and the list of disputed issues is long: proliferation, human rights, Taiwan and trade. We must, however, choose our course carefully. As Henry Kissinger said this morning before the Senate Foreign Relations Committee: ''The danger of the existing roller coaster towards confrontation to both China and the United States is incalculable.'' I share Dr. Kissinger's concern over the dangers of a full-scale confrontation.

But just as we must not casually move toward a conflict that serves neither country, we cannot remain silent in the face of outrageous conduct. The most fundamental duty of Government is to protect the rights of its citizens—and Harry Wu is an American citizen. I urge the Chinese to release Harry Wu, and remove this latest flashpoint in our relations.

A major United Nations Conference on Women is scheduled for September in Beijing. I agree with the bipartisan view recently expressed by my Republican colleague from Kansas, Senator KASSEBAUM, and the Democratic Congressman from Indiana, LEE HAMILTON, when they suggested the United Nations should quit wasting scarce resources on conferences that spend much and achieve little.

I understand the administration plans to send a senior delegation, including two Cabinet officers. In my view, it would be wrong for the United States to participate in the United Nations Women's Conference at any level or in any fashion as long as Harry Wu is held. This morning, along with Speaker GINGRICH, Chairman HELMS, Chairman GILMAN, and Helsinki Commission Co-Chairs Senator D'AMATO and Congressman CHRIS SMITH, I sent a letter to President Clinton urging a U.S. boycott of the U.N. Women's Conference as long as Harry Wu is detained. In my view, that is the least this Government can do to try to show our displeasure with China's action. It is also the only prudent course in light of the State Department's briefing that they could not guarantee the safety of Americans traveling to the conference.

I ask unanimous consent that a copy of the letter, and a copy of a Wall Street Journal article by Nina Shea, ''Free Harry Wu'' be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONGRESS OF THE UNITED STATES,
Washington, DC, July 13, 1995.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: We are writing to express our support for your efforts to secure the release of Harry Wu. It is unconscionable that an American citizen traveling on a valid passport with a valid Chinese visa was arrested, detained and charged in violation of accepted international law. Furthermore, it is an outrage that access to Mr. Wu by American officials was not granted according to the terms of the U.S.-P.R.C. Consular Convention of 1982.

Harry Wu has undertaken heroic efforts to expose Chinese human rights abuses. For almost two decades, he suffered from the ravages of China's prison system. Today, Harry Wu is once again subject to China's closed prison system, and there are concerns about his health and safety.

We are aware that your Administration had planned to participate in the Fourth United Nations Conference on Women, scheduled to be held in September in Beijing. In our view, it would be wholly inappropriate to participate in any international conference in the People's Republic of China while an American citizen is being unjustly detained by the Chinese government. There is ample precedent to deny American participation in international events which only accord prestige to regimes which deserve condemnation—the boycott of the 1980 Olympics in Moscow in the aftermath of the invasion of Afghanistan comes to mind.

Accordingly, we urge you to announce the United States government will not participate—at any level or in any fashion—in the upcoming United Nations Conference on Women as long as Harry Wu is detained in China. Anything less would send a tragic signal of disregard for the human rights of an American citizen.

Sincerely,

NEWT GINGRICH.
BEN GILMAN.
CHRIS SMITH.
BOB DOLE.
JESSE HELMS.
ALFONSE D'AMATO.

[From the Wall Street Journal, July 3, 1995]

FREE HARRY WU

(By Nina Shea)

On June 19, Harry Wu, a 58-year-old American, was arrested by Chinese authorities at the Kazakhstan border. Mr. Wu's passport was in order and he had recently been issued a Chinese entry visa, valid until Sept. 11, 1995. No outstanding charges or arrest warrants were pending against him. No incriminating evidence was found on him or his American traveling companion at the time of the arrest. No charges have been made public against him to date. While his companion has been expelled from China, he remains held incommunicado at an undisclosed location.

The reason the Chinese are detaining Mr. Wu is obvious. In his book ''The Power of the Powerless,'' Vaclav Havel wrote that ''living the truth'' is ''the fundamental threat'' to the post-totalitarian system, and thus it is ''suppressed more severely than anything else.'' Mr. Wu is a bald critic of the repressive human-rights policies of Beijing, and the Chinese fear nothing more than the truth he witnesses.

Mr. Wu made a daring trip to China last year to conduct independent investigations into the forcible removal of prisoner organs for transplant and the export of prisoner-produced goods to the U.S. His award-winning documentation aired on American and British television. Mr. Wu's autobiography, ''Bitter Winds,'' is a devastating expose of the Chinese prison work camps, or *laogai.* Mr. Wu knew well of what he wrote; after criticizing the Soviet invasion of Hungary. He was arrested at the age of 23 for being a ''rightist,'' a charge that was ''corrected'' at the time of his release in 1979, after he had served 19 years in the laogai.

Harry Wu is a hero of our time. He is a human rights dissident of the stature of Mr. Havel, Andrei Sakharov and Anatoly Shcharansky. Like them, he suffered for his principles and spoke of the atrocities of dictatorship from personal experience. And like them, he risked all to give relentless voice to others who are victimized into silence. Through the Laogai Institute, the human rights group he founded, Mr. Wu has painstakingly tracked down other deeply traumatized, former prisoners of the laogai who are in exile throughout the world, encouraging them and providing them with opportunities to tell their stories.

Mr. Wu's last public appearance in the U.S. was at a Puebla Institute-Wethersfield Institute seminar in New York in May, where he briefed American businesses about continuing human rights persecution against Christian churches in China. At a time when the West would rather believe that China, with its new markets, has changed, Mr. Wu would not let it be forgotten that China's one-party Communist political structure and military apparatus remain intact and operational.

In New York, he told the American business community: ''The core of the human rights issue in China today is that there is a fundamental machinery for crushing human beings—physically, psychologically and spiritually—called the laogai camp system, of which we have identified, 1,100 separate camps. It is also an integral part of the national economy. Its importance is illustrated by the fact that one third of China's tea is produced in laogai camps. Sixty percent of China's rubber vulcanizing chemicals are produced in a single laogai camp in Shenyang. One of the largest steel pipe works in the country is a laogai camp. I could go on and on. The laogai system is: ''Forced labor is the means; thought reform is the aim.'. . . The laogai is not simply a prison system; it is a political tool for maintaining the Communist Party's totalitarian rule.''

For now, Harry Wu has disappeared once again into China's closed penal system. But the U.S. must not forget him. Because he is an American citizen, and because he embodies the best of the indomitable human spirit, the Clinton administration must take extraordinary steps to secure his release. If Mr. Wu is not freed, the U.S. should withdraw from the Fourth United Nations Conference on Women to be held in Beijing in September. This conference is a world-wide summit on the state of human rights as they pertain to women. Since China lost its bid in 1993 to host the Summer Olympics due to its poor human rights record, it has been eager for the prestige accorded a country chosen for this paramount human rights gathering.

At the very time China is violating the human rights of a heroic American citizen, it would be nothing less than craven for the U.S. to lend prestige to China by designating a high-level human rights delegation for the Beijing conference—one to be led by first lady Hillary Rodham Clinton and United Nations Ambassador Madeleine Albright and Timothy Wirth, assistant secretary of state for global affairs. To conduct international diplomatic business-as-usual on the topic of human rights theory as a guest of the very country that is imprisoning, without any human rights, one of our own citizens would be a cynical betrayal, not only of Mr. Wu but of human rights in general.

RECOMMENDATIONS OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION—MESSAGE FROM THE PRESIDENT—PM 65

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Armed Services:

To the Congress of the United States:

I transmit herewith the report containing the recommendations of the Defense Base Closure and Realignment Commission (BRAC) pursuant to section 2903 of Public Law 101–510, 104 Stat. 1810, as amended.

I hereby certify that I approve all the recommendations contained in the Commission's report.

In a July 8, 1995, letter to Deputy Secretary of Defense White (attached), Chairman Dixon confirmed that the Commission's recommendations permit the Department of Defense to privatize the work loads of the McClellan and Kelly facilities in place or elsewhere in their respective communities. The ability of the Defense Department to do this mitigates the economic impact on those communities, while helping the Air Force avoid the disruption in readiness that would result from relocation, as well as preserve the important defense work forces there.

As I transmit this report to the Congress, I want to emphasize that the Commission's agreement that the Secretary enjoys full authority and discretion to transfer work load from these two installations to the private sector, in place, locally or otherwise, is an integral part of the report. Should the Congress approve this package but then subsequently take action in other legislation to restrict privatization options at McClellan or Kelly, I would regard that action as a breach of Public Law 101–510 in the same manner as if the Congress were to attempt to reverse by legislation any other material direction of this or any other BRAC.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *July 13, 1995.*

MESSAGES FROM THE HOUSE

At 11:29 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 1905. An act making appropriations for energy and water development for the fiscal year ending September 30, 1996, and for other purposes.

The message also announced that pursuant to the provisions of section 169(b) of Public Law 102-138, the Speaker appoints the following Members to the U.S. Delegation to the Parliamentary Assembly of the Conference on Security and Cooperation in Europe on the part of the House: Mr. SMITH of New Jersey, Vice Chairman, Mr. HOYER, Mr. TORRICELLI, Mr. SAWYER, Mr. COLEMAN, Mr. FORBES, Mr. CARDIN, and Ms. SLAUGHTER.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 1905. An act making appropriations for energy and water development for the fiscal year ending September 30, 1996, and for other purposes; to the Committee on Appropriations.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–1155. A communication from the General Counsel of the Department of Defense, transmitting, pursuant to law, a draft of proposed legislation to clarify ambiguity relating to the applicability of section 3703a of title 46, United States Code, to vessels in the National Defense Reserve Fleet; to the Committee on Commerce, Science, and Transportation.

EC–1156. A communication from the Secretary of Commerce, transmitting, pursuant to law, a report relative to increased aeronautical chart prices; to the Committee on Commerce, Science, and Transportation.

EC–1157. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report relative to airport redevelopment areas; to the Committee on Commerce, Science, and Transportation.

EC–1158. A communication from the Administrator of the National Aeronautics and Space Administration, transmitting, pursuant to law, a report relative to metric conversion; to the Committee on Commerce, Science, and Transportation.

EC–1159. A communication from the Deputy Associate Director for Compliance, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC–1160. A communication from the Deputy Associate Director for Compliance, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC–1161. A communication from the Deputy Associate Director for Compliance, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC–1162. A communication from the Deputy Associate Director for Compliance, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, notice of the intention to make refunds of offshore lease revenues where a refund or recoupment is appropriate; to the Committee on Energy and Natural Resources.

EC–1163. A communication from the Secretary of the Interior, transmitting, pursuant to law, the 1994 annual report of the Southwestern Pennsylvania Heritage Preservation Commission; to the Committee on Energy and Natural Resources.

EC–1164. A communication from the Assistant Administrator of the Environmental Protection Agency, transmitting, pursuant to law, a report of progress on the clean water state revolving fund; to the Committee on Environment and Public Works.

EC–1165. A communication from the Chairman of the Nuclear Regulatory Commission, transmitting, pursuant to law, a report relative to abnormal occurrences; to the Committee on Environment and Public Works.

EC–1166. A communication from the Deputy Administrator of the General Services Administration, transmitting, pursuant to law, a space situation report for the National Oceanic and Atmospheric Administration consolidation for Hampton Roads, VA; to the Committee on Environment and Public Works.

EC–1167. A communication from the Acting Administrator of the Environmental Protection Agency, transmitting, a draft of proposed legislation to amend and extend the Toxic Substances Control Act, as amended for 2 years; to the Committee on Environment and Public Works.

EC–1168. A communication from the Assistant Deputy Under Secretary of Defense (Environmental Security), Department of Defense, transmitting, pursuant to law, a notice of intent to submit a corrected final edition of a report relative to the defense environmental restoration program; to the Committee on Environment and Public Works.

EC–1169. A communication from the General Counsel of the Navy, transmitting, a draft of proposed legislation entitled the ''Uniform National Discharge Standards for Armed Forces Vessels Act of 1995''; to the Committee on Environment and Public Works.

EC–1170. A communication from the Assistant Secretary (Legislative Affairs), Department of the Treasury, transmitting, pursuant to law, a report relative to the Earned Income Tax Credit; to the Committee on Finance.

EC–1171. A communication from the Secretary of Labor, transmitting, pursuant to law, a report relative to worker adjustment assistance training funds; to the Committee on Finance.

EC–1172. A communication from the President of the United States, transmitting, pursuant to law, a report relative to the emigration laws and policies of the Republic of Bulgaria; to the Committee on Finance.

EC–1173. A communication from the Secretary of Health and Human Services, transmitting, a draft of proposed legislation to improve payment integrity in the Medicare and Medicaid programs, and for other purposes; to the Committee on Finance.

EC–1174. A communication from the Director of the Department of Legislative Reference, transmitting, pursuant to law, a compact relative to the Woodrow Wilson Bridge; to the Committee on the Judiciary.

EC–1175. A communication from the Attorney General of the United States, transmitting, pursuant to law, the fiscal year 1994 report of the activities of the Federal Courts under the Equal Access to Justice Act; to the Committee on the Judiciary.

EC–1176. A communication from the Attorney for the National Council of Radiation Protection and Measurements, transmitting, pursuant to law, the 1994 annual report of independent auditors of the records of the Council; to the Committee on the Judiciary.

EC–1177. A communication from the General Counsel and Chief Financial Officer of the National Tropical Botanical Garden, transmitting, pursuant to law, the calendar year 1994 audit report; to the Committee on the Judiciary.

EC–1178. A communication from the Secretary of Housing and Urban Development, transmitting, a draft of proposed legislation to exempt HUD and Agriculture multifamily loan foreclosures and related actions from the bankruptcy code; to the Committee on the Judiciary.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. CHAFEE, from the Committee on Environment and Public Works, without amendment:

S. 1033. An original bill to amend the Federal Water Pollution Control Act to establish uniform national discharge standards for the control of water pollution from vessels of the Armed Forces, and for other purposes (Rept. No. 104–113).

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. KASSEBAUM (for herself, Mr. KENNEDY, Mr. FRIST, Mr. DODD, Mr. JEFFORDS, Ms. MIKULSKI, Mr. GREGG, Mr. WELLSTONE, Mr. GORTON, Mr. PELL, Mr. HATCH, Mr. SIMON, Mr. CHAFEE and Mr. LIEBERMAN):

S. 1028. A bill to provide increased access to health care benefits, to provide increased portability of health care benefits, to provide increased security of health care benefits, to increase the purchasing power of individuals and small employers, and for other purposes; to the Committee on Labor and Human Resources.

THE HEALTH INSURANCE REFORM ACT OF 1995

Mrs. KASSEBAUM. Mr. President, I rise today to introduce on behalf of myself, Senators KENNEDY, FRIST, GREGG, JEFFORDS, GORTON, HATCH, CHAFEE, PELL, DODD, SIMON, MIKULSKI, WELLSTONE, and LIEBERMAN, the Health Insurance Reform Act of 1995.

This legislation will make it easier for individuals and employers to buy and keep health insurance—even when a family member or employee becomes ill. And it will allow people to change jobs without fear of losing their health coverage.

Despite past State and Federal reform efforts, the lack of poor portability of health insurance remains a serious concern for many Americans, particularly those with preexisting health conditions. The General Accounting Office estimates that as many as 25 million Americans could benefit from this legislation.

The Health Insurance Reform Act builds upon and strengthens the current private insurance market by, one, guaranteeing that private health insurance coverage will be available, renewable and portable; two, limiting preexisting condition exclusions; and, three, increasing the purchasing clout of individuals and small employers by creating incentives to form private, voluntary coalitions to negotiate with the providers and health plans.

Mr. President, I believe that the American people want us to work together to fix what is broken in the current system without relying on big Government solutions.

The legislation we are introducing today does not impose new, expensive regulatory requirements on individuals, employers or States. It does not create new Federal bureaucracies. It does not create any new taxes, spending or price controls nor does it require employers to pay for health insurance coverage.

While this insurance reform legislation alone will not cure all the ills of the Nation's health care system, it will in some small and important ways, I believe, promote greater access and security for health coverage for all Americans by requiring private insurance carriers to compete based on quality, price, and service instead of by refusing to provide coverage to those who are in poor health and who need it the most.

Mr. President, I want to thank all of my cosponsors. Senators GREGG, FRIST, JEFFORDS, HATCH and GORTON have all contributed a great deal to this effort. Senator JEFFORDS has worked particularly hard on the group purchasing provisions of the legislation. But I want to especially recognize the contributions of the ranking member of the Labor and Human Resources Committee, Senator KENNEDY. He has worked, along with his staff, for many hours, in many ways, to help make this legislation a bipartisan effort. Senator KENNEDY has spent many years on the health care agenda working tirelessly to improve the health care delivery system. And I am particularly pleased that this is such a strong bipartisan bill that we are introducing today. It is not a major piece of legislation. As I said, it is not going to be the answer to all the ills in our health care system. But I think it is a very important step forward.

I am confident that with the support of the other original cosponsors and others, the Labor Committee we will be able to report this legislation favorably in the near future and we can begin to move forward, on a bipartisan basis, to make private health insurance more readily available, more secure and more affordable for all Americans. Mr. President, I intend to work with all of my colleagues to ensure that these reforms are enacted during the 104th Congress.

Mr. KENNEDY. Mr. President, first of all, I welcome the opportunity to join Senator KASSEBAUM in the introduction of the Health Insurance Reform Act of 1995. I would like to pay tribute to her leadership in this area which is of enormous concern to the American people—addressing the issue of access to health insurance in a way that is going to be reasonable for working families in this country.

Making health insurance available to working Americans means they will be able to receive the kind of high-quality health care that is possible in this country—and that care will be available in the inner cities and rural communities of this country. Improving access to health care is one more way of stressing the obvious importance of prevention and demonstrating our commitment to the American people, particularly our seniors, to provide them with the security of health benefits in this diverse and complex Nation.

Building on the current health care system is incredibly, incredibly difficult and complex. Many of us have been addressing this issue over a considerable period of time. I think comprehensive reform of the system is still a very, very worthy objective.

But what we have today is something which, I think, is extremely important. There will be those who say, ''Well, have we lost our goal of trying to deal in a comprehensive way? Should we just come back and try to reform the entire system? Let's just wait for the opportunity to do so.''

Senator KASSEBAUM has said, ''Let us try to find common ground and let us try to make progress in areas where progress can be made. And, at a time where we do have diversity on a great many issues that are of very great importance and where there is a difference in viewpoint by the American people, expressed by their representatives—let us put that aside and say that it is more important for families in this country to have access to health care; it is more important to make meaningful progress to try to address their central needs.'' I think she deserves great credit for these initiatives and for working in a very strong, bipartisan way to try to find common ground on an issue which is going to make a very important and significant difference in the lives of millions of Americans who have preexisting conditions. This bill will help respond to the real needs and anxieties of millions of people.

Often we debate and discuss the bottom line issues in terms of cost, and that is certainly important. But for those who have a disability, we forget that these people live with a sense of fear and anxiety about what their future holds and whether they will have coverage for their health needs, or whether they will be locked into a particular work situation. The reforms in this bill let people know that Congress believes our working Americans deserve opportunities for moving ahead in terms of their career and progress for their families—which have been limited. It also encourages small businesses to work together to try to leverage the system in a positive and constructive way by using their purchasing power in the economy to negotiate a more reasonable cost for health care.

So, even though some might consider this a modest step, I think it is an extremely important one. And it is one in which I welcome the opportunity to work with Senator KASSEBAUM and to work with Senator JEFFORDS, who, as Senator KASSEBAUM has mentioned, spends a great deal of time on this issue. Many others on our committee

do also. Senator KASSEBAUM has mentioned our Republican colleagues. I would like to mention our Democratic colleagues as well. Senator WELLSTONE has taken a particular interest and has made important contributions. And generally speaking, all of the members spend time and are interested in improving this Nation's health care system.

Having been honored with chairing the Labor and Human Resources Committee last year, I was enormously impressed with the commitment of the members on the committee when we did move towards a markup on health care. The markup lasted for a period of some 10 days, long days from 8 or 9 in the morning until 10 at night. We had virtually complete attendance of our committee, Republicans and Democrats, all really participating in that process, all who went through an extraordinary learning experience. And, as a result of that, there were broad areas of bipartisan agreement and there were important areas of difference.

For a number of reasons, we were unable to reach final legislation in the U.S. Senate. But nonetheless, I think all of us, as legislators, try and learn from past experiences.

One that certainly continues to ring in my mind is the real desire in this body by Republicans and Democrats alike to see progress in this area. It is enormously obvious the reason why, and that is because this is a matter of ongoing central concern to families in this country. We all have seen the results of various polls about the budget, about deficits, about taxes, about priorities, about Medicare and Medicaid cuts. A variety of opinions are illustrated in newspapers and on radio and television across the country.

But one element that shows up in all kinds of studies and reviews is the real desire of the American people for Congress to try and find common ground; to try and make progress; to try and move this process forward. We have a very, very important responsibility to try and do so.

There are naysayers. There are those who will find reasons to criticize this approach. There will be those who say it goes too far in some areas—and there will be those who say it does not go far enough. I want to be one of those to say—I think this is an enormously important and constructive effort and I am very hopeful that we can build broad support in the Senate with the introduction of this bill as we move through the hearing process and through the markup.

I invite all of the Members on this side, as Senator KASSEBAUM has done on her side, to join with us to make suggestions and recommendations. The issue of health care is a constantly changing landscape. It is dramatically different from where it was 2 or 4 years ago. But despite this, there continue to be issues of great concern for which we all agree something must be done—and those include the issues of access, affordability and coverage.

What we have tried to do in this bill is to respond in a way, under the leadership of Senator KASSEBAUM, that we could find the areas of common stream. We have tried to review what we debated last year and take what was central to the different approaches that were put forward in the Senate by Republicans as well as Democrats. Then we have tried to take those recommendations and shape them in ways which would be more adaptive to the kind of conditions that we find today—advancing those ideas in a way that really can make an important difference.

Mr. President, I welcome the chance of joining today with my colleagues in introducing the Health Insurance Reform Act of 1995. To review, I will now summarize and highlight the specifics of the bill.

Mr. President, it is a pleasure to join Senator KASSEBAUM in introducing the Health Insurance Reform Act of 1995. This bipartisan proposal was developed in close cooperation between our two offices, and I commend her for her leadership.

The private health insurance market in the United States is deeply flawed, and with each passing year, the flaws become more serious. This legislation is designed to remedy some of the worst abuses of the current system, and provides protection to large number of families victimized by such abuses.

Today, insurers often impose exclusion for preexisting conditions. As a result, insurance is often denied for the very illnesses most likely to require medical care.

The valid purpose of such exclusions is to prevent people from gaming the system by purchasing coverage only when they get sick. But too often today, the exclusions go too far. No matter how faithfully people pay their premiums, they may have to start again with a new exclusion period if they change jobs or lose their coverage.

Eighty-one million Americans have conditions that could subject them to such exclusions if they lose their current coverage. Sometimes, the exclusions make them completely uninsurable.

Many employers do not provide health insurance to their workers at all, but too often, even those who want to do the right thing can't find an insurer to write the coverage. Sometimes entire categories of businesses, with millions of employees, are redlined out of coverage. Even if a firm is in an acceptable category, coverage may be denied if someone in the firm—or a member of their family—is in poor health. People who have paid insurance premiums for years can be canceled because they have the misfortune to get sick, just when they need coverage the most.

One consequence of the current system is job lock. Workers who want to change jobs to improve their careers or provide more efficiently for their families must give up the opportunity because it means losing their health insurance. A quarter of all American workers say they have been forced to stay in a job they otherwise would have left, because they were afraid of losing their health insurance.

This legislation addresses these problems. Exclusions for preexisting condition will be limited. They cannot be reimposed on those with current coverage who change jobs or whose employer changes insurance companies. Cancellation of policies will be prohibited for those who continue to pay their premiums. No employers who want to buy a policy can be turned down because of the health of their employees. No employees can be excluded from an employer's policy because they have higher than average health costs. Any employee losing group coverage because they leave their job or for any other reason would be guaranteed the right to buy an individual policy.

Small businesses and individuals are particularly victimized under the current system, because they lack the bargaining power of larger corporations. The legislation addresses this problem by encouraging the development of purchasing cooperatives that will have the same kind of clout enjoyed by large corporations.

Because of concerns about the impact on overall premiums, this legislation does not provide for guaranteed availability of coverage for those who have not been part of an employment group. The bill requires the Secretary of HHS to conduct a study of current State practices in this area, to consult with the National Association of Insurance Commissioners and other appropriate sources of expertise, and to provide recommendations for solving this serious problem.

I continue to support the goal of comprehensive health reform. I am confident we will find a way to provide health security for all citizens, stop the ominous rise in the number of uninsured, and the ridiculous soaring cost of health care. This bill is not a comprehensive reform, but it will eliminate some of the worst abuses of the private insurance market and provide greater protection for millions of our fellow citizens.

Mr. FRIST. Mr. President, I rise today to join the distinguished chair of the Committee on Labor and Human Resources, Mrs. KASSEBAUM, in introducing the bipartisan ''Health Insurance Reform Act of 1995''.

This bill provides long awaited reforms for this country's health insurance market. I say long awaited because the Senate passed similar insurance reforms a few years ago, but regrettably they failed to become law. This legislation, with its bipartisan support, reflects essential market-based reforms.

One of the important things I have witnessed, from my perspective as a

physician and now as a member of the Senate Committee on Labor and Human Resources, is the absolutely critical role that both employers and employees play in the current health care system, and the critical role they must play as we struggle to reform the system to deliver higher quality health care at lower costs.

Over the years, employers have directed much of the change in the health care system. Many employers have been a creative force in containing health care costs. In fact, as a result of innovative and aggressive management of health care costs, employers actually saw their health care costs for 1994 decline 1.1 percent for the first time in a decade.

However, this success does not mean that the current system is free from problems. It is not.

It is the large employers which have the greatest influence in the market. Small employers lack the same bargaining power. For example, the large employers reported health care cost decreases averaging 1.9 percent, while small employers experienced an average cost increase of 6.5 percent. Moreover, uninsured rates continue to climb in many States and many families are finding it more difficult to obtain health coverage.

The system needs to be reformed so that health care is available to all Americans.

Last year, many of these same insurance reforms became entangled with President Clinton's heavy-handed approach to health care reform. As a result, Congress again failed to pass these provisions which are necessary to increase access to insurance. Even so, many States moved forward with their own reforms. Forty-four States, including my State of Tennessee, have passed some type of small group insurance market reform. In addition, 27 States have set up high-risk insurance pools to increase access to insurance for individuals.

There should be no bar to insurance based on preexisting conditions, and no one should have to face the fear that they will lose their health insurance when they lose their job, change jobs, divorce, or become sick. Mr. President, this is the focus of this legislation.

As a transplant surgeon, I have personally witnessed the obstacles my patients face after they have received a new heart and are ready to return to the work force and productive lives. These reforms go to the heart of the problem for families that feel locked into their jobs because an illness makes it difficult to obtain health insurance. If I give someone a new heart today, they cannot hope to look for a new job tomorrow. Rather, they desperately hope to keep their current job to maintain their health insurance coverage. They are trapped. The costs of their care prohibit the freedom of movement. Therefore, Mr. President, this bill ensures portability from one group health plan to another.

When insurers are allowed to discriminate based on a preexisting condition, a heart transplant recipient becomes a liability to the rest of a company's employees. It can even result in an insurer dropping the entire employer group altogether. Mr. President, this legislation prohibits insurance carriers from refusing to issue a policy or refusing to renew an existing policy. It is my hope that this bill will help return my patients to work and back to their pretransplant lives.

This bill reflects a desire to build a partnership between business and Government, not an adversarial relationship. Instead of mandating and controlling the health care market, Government should ensure that the market operates efficiently to deliver value to all consumers regardless of their health status.

Mr. JEFFORDS. Mr. President, I rise today in support of the Health Insurance Reform Act of 1995, which is being introduced today by Senators KASSEBAUM, KENNEDY, FRIST, DODD, GORTON, MIKULSKI, GREGG, PELL, SIMON, WELLSTONE, CHAFEE, HATCH, LIEBERMAN, and myself. I applaud Senator KASSEBAUM and Senator KENNEDY for their commitment in developing, what I believe to be the first truly bipartisan insurance reform bill introduced this Congress. As I have stated many times in the past few years, health care reform cannot be successful unless Republicans and Democrats work together.

I am proud to be an original cosponsor of a piece of legislation that has been developed in one of the most inclusive processes that I have been privileged to be a part. This legislation makes great strides in laying a foundation for a well functioning private market, which is critical if we are to be successful in creating a solid health care system for all Americans.

This bill puts into place minimum national insurance reform standards, which transforms the current exclusionary insurance system into one which moves closer to accepting all comers, yet the bill allows States a great amount of flexibility to move ahead at a faster pace if they choose.

This bill, assures that if any individual has insurance today even if they get sick, or change or lose their job, they will be able to purchase insurance tomorrow.

This bill encourages a variety of health plans to compete in the marketplace. Individuals will have choices between managed care plans which focus on preventative care, as well as, catastrophic plans with medical savings accounts.

This bill fixes certain glitches in COBRA so that individuals with disabilities will no longer have to experience a gap in health insurance between the transition from employer to Medicare coverage.

Mr. President, I am most grateful for the inclusion of the health plan purchasing coalition section of this legislation. I will be introducing legislation next week called the Employer Group Purchasing Reform Act of 1995, in which health plan purchasing coalitions are the center piece. I believe very strongly that voluntary private market group purchasing arrangements, for employers and individuals, is the key to making health insurance not only more accessible but also more affordable for all Americans.

My legislation will also address the fraud and abuse in employer group purchasing arrangements called multiple employer welfare arrangements [MEWA's] under the Employee Retirement Income Security Act of 1974 [ERISA]. Senators NUNN and COHEN have both held hearings over the past few years which have uncovered ponzi schemes that have left millions of small business owners and their employees sick and without insurance. The legislation will give clear authority to the States to shut down group purchasing arrangements that are fraudulent and clear authority to certify health plan purchasing coalitions. In addition, the legislation also begins to level the playing field between insured and self-funded health plans in the market by amending ERISA. I look forward to the same bipartisan support of this bill as has been achieved by Senators KASSEBAUM and KENNEDY.

Mr. President, I am very eager to work with Senator KASSEBAUM, chairman of the Labor and Human Resources Committee, in the next couple of months, to report a market reform bill out of committee that can be brought to the Senate floor this session. We must begin to address Americans concern about portability and affordability of health insurance this year and I believe that the Health Insurance Reform Act of 1995 is an excellent place to start.

Mr. HATCH. Mr. President, I am delighted to join with the distinguished chairman and ranking minority member of the Committee on Labor and Human Resources in cosponsoring today S. 1028, the Health Insurance Reform Act of 1995.

This important piece of legislation is designed not only to increase access to health care benefits, but also to provide portability of those benefits and to increase the purchasing power of individuals and small employers who wish to seek insurance.

As my colleagues know, the issue of health care coverage for millions of Americans remains a critical concern for this Congress and for the American people.

The bill which we introduce today represents a reasonable and significant step in extending health insurance to a larger segment of the American population.

As my colleagues are aware, for 18 years, I had the privilege of serving on the Labor and Human Resources Committee, including 6 years as chairman and 6 years as ranking minority member.

We have spent innumerable hours pondering how to improve our Nation's health care delivery system. There were times when we thought we had the answer, but we could never manage to develop exactly the right bill.

More recently, last year in the Labor Committee we spent innumerable hours considering President Clinton's Health Security Act. Although my esteemed colleague and close friend, Senator KENNEDY, fought long and hard for the President's proposal, that legislation was ultimately rejected by the American people and by the Congress.

If we learned any lesson from that experience, it was that Americans do not want the Federal Government to have a larger role in shaping America's health care system.

However, that does not lessen the need for some health care reform, and it is clear that insurance market reform is one area in which we have had, and continue to have, a good deal of consensus. We should not let the need for other reforms hold up passage of this much needed measure.

Chairman KASSEBAUM and her staff are to be congratulated for developing the Health Insurance Reform Act based on the lessons we learned last year. It is a narrowly tailored bill which addresses very real problems in the marketplace.

This bill will achieve many of the objectives we sought in the areas of insurance portability as well as correcting problems with respect to those individuals with preexisting health conditions.

I am particularly pleased that the measure is receiving wide bipartisan support among the members of the Labor Committee. This is a very good signal that shows we have a viable bill which represents a consensus approach to a difficult and complicated problem.

I strongly believe this bill represents the first meaningful and generally acceptable bipartisan insurance reform proposal in either house of Congress and I hope it will be enacted swiftly.

Mr. WELLSTONE. Mr. President, I am pleased to join Senators KENNEDY and KASSEBAUM, as well as many of my colleagues on the Labor and Human Resources Committee, in introducing the Health Insurance Reform Act of 1995. The reforms included in this legislation would make it illegal for insurers to drop people when they become sick and to discriminate against individuals with preexisting conditions. While I wish that we were doing much more in Congress to ensure that all Americans have access to affordable, comprehensive health insurance coverage, I view the insurance reforms contained in this legislation as a serious step in the right direction. There is no excuse for not doing what we can to make coverage more accessible—especially for people with preexisting conditions and disabilities. It is a disgrace that our private insurance system continues to discriminate against precisely the individuals who most need coverage.

All working Americans face a growing threat from the uncertainties created by the health insurance system. Even people with good health insurance coverage cannot count on protection if they lose or change jobs, especially if someone in their family has a preexisting condition. Our current health care system allows insurers to collect premiums for years and then suddenly refuse to renew coverage if individuals or employees get sick. It also allows insurers to routinely deny coverage to different types of businesses from auto dealers to restaurants.

The GAO has estimated that as many as 25 million Americans could potentially benefit from the insurance reforms included in this bipartisan bill. Most of the people who would be helped by this legislation are people who change jobs and currently face preexisting conditions or waiting periods with their new health coverage.

Many States, including Minnesota, have already enacted standards for insurance carriers, but because ERISA preemption prevents States from regulating self-funded health plans, only Federal standards can apply to all health plans. More and more employers in Minnesota have been choosing to offer self-funded plans to employees. Such plans now enroll about 1.5 million people, up from 890,000 in 1992, and about 50 percent of all privately insured residents. Current estimates also show that more than 400,000 Minnesotans—including 91,000 children—are uninsured.

I am under no delusions that these insurance reforms will fix our broken health care system. They will not result in universal coverage—or anywhere near it—and they will not solve the problem of rising costs. After all, only comprehensive reform will make health care affordable for many of the uninsured who simply cannot afford the high cost of coverage.

While I am committed to fighting for comprehensive reforms that would include everyone and enable working families to afford health care coverage as good as Members of Congress have, I recognize that this may not happen this year. At the very least, however, we should act on reforms that would address some of the most egregious inequities in our current system, as well as those that would allow States to expand access and contain costs.

By Mr. SIMPSON (for himself and Mr. BINGAMAN):

S. 1029. A bill to amend the Foreign Assistance Act of 1961 to establish and strengthen policies and programs for the early stabilization of world population through the global expansion of reproductive choice, and for other purposes; to the Committee on Foreign Relations.

THE INTERNATIONAL POPULATION STABILIZATION AND REPRODUCTIVE HEALTH ACT

Mr. SIMPSON. Mr. President I rise to join my good friend and able colleague from New Mexico, Senator JEFF BINGAMAN. The two of us are reintroducing the very important legislation called the International Population Stabilization and Reproductive Health Act.

During the last congressional session, Senator BINGAMAN and I introduced this bill to call attention to some very vital issues in this country and in the world. Our former colleague, Tim Wirth, championed these issues while he was in the Senate and, together, he and I laid the foundation upon which this bill is built, and then came my colleague from New Mexico, JEFF BINGAMAN—Senator BINGAMAN, who I thoroughly enjoy, and enjoy working with, his word is his bond. We work well together. He shares the same concerns and commitment to this crucial global issue as I do.

I am pleased to be working in a bipartisan fashion with him so we can move forward with an effective public policy on an issue that affects everyone in some way, worldwide.

The legislation we introduce today builds upon the Programme of Action Document adopted by acclamation by 180 nation states in September of 1994 at the International Conference on Population and Development in Cairo.

At the conference, the United States was seen, as always, as the world's leader on population and development assistance. I was a congressional delegate at the conference. There were not a lot of colleagues seeking to go. Senator JOHN KERRY was there and represented our country well.

I came away much impressed with the leadership and direction displayed by our Vice President, AL GORE. Then, of course, assistance given to him by the now Under Secretary of State, former Senator Wirth, in guiding the conference and its delegates in developing a consensus document of a broad range of short- and long-range recommendations concerning maternal and child health care, strengthening family planning programs, the promotion of educational opportunities for girls and women, and improving the status and rights of women across the world.

We surely do not want to lose our moral leadership role and relinquish any momentum by abandoning or severely weakening our financial commitment to population and development assistance. The United States needs to continue its global efforts to achieve responsible and sustainable population levels, and to back up that leadership with specific commitments to population planning activities.

In my mind, of all the challenges facing this country—and there are plenty of them—and around the world—and there are plenty of them—none compares to that of the increasing of the population growth of the world. All of our efforts to protect the environment, I have heard all of that in the last few days—protecting the environment, protecting this, protecting the aged, protecting the young—all the things to protect the environment and promote

economic development around the world are compromised and severely injured by the staggering growth in the world's population.

I hope my colleagues realize, of course, that there are currently 5.7 billion people on the Earth. In 1950, when I was a freshman at the University of Wyoming, not that long ago, there were 2.5 billion people on the face of the Earth. Mr. President, 2.5 billion in 1950, 5.7 billion today.

If current birth and death rates continue, the world's population will double again in just 40 years. Despite some progress in reducing fertility rates, birth rates in developing countries are declining too slowly to prevent a cataclysmic near tripling of the human race before stabilization can occur.

The bill as Senator BINGAMAN and I propose focuses on a coordinated strategy that will help to achieve world population stabilization, encourage global economic development and self-determination, and improve the health and well-being of women and their children.

Fundamental to this legislation is a recognition of the fact that worldwide efforts to alleviate poverty, stabilize populations, and secure the environment have been undermined by a total lack of attention to women's reproductive health and the role of women in the economic development of their families, their communities, and their countries.

Under the legislation, global and U.S. expenditure targets will be set for overall population assistance, with specific programs to help achieve universal access to culturally competent family planning services and reproductive health care; expand programs for treatment and prevention of HIV and AIDS and other sexually transmitted diseases; close the gender gap in literacy and primary and secondary education; and increase economic opportunities for women so they can realize their full productivity potential.

Other initiatives authorized under this legislation will help to reduce global maternal and infant mortality rates, and improve the overall health status of women and their children by addressing problems such as unsafe abortion. This is not about abortion. I have been here a long time. Every time we bring up something that has to do with stabilization of the Earth's population, somebody throws in the issue of abortion. That is not what this is about.

It is also about harmful practices such as female genital mutilation, along with malnutrition, low immunization rates, and the spread of contagious diseases.

There is a real need throughout much of the developing world for access to family planning services, especially as to safe abortion. Women in these countries are desperately seeking ways to take control of their reproductive lives and cannot do so because there is a severe lack of access to such services.

Worldwide, estimates are that 350 million couples want to space or prevent another pregnancy but lack the access to a full range of modern family planning.

In addition, any comprehensive family planning initiative must include access to primary health care with an emphasis on child survival to reduce infant mortality. In many developing countries, parents have a perception that many of their children will not survive beyond their first birthdays. If these parent's fears are allayed, they will not feel much pressure to have more children than they actually desire in order to insure against the possible loss of one or more of their children before adulthood.

This is why for all of these pressing reasons, I join today with my friend and colleague from New Mexico, Senator BINGAMAN in introducing this legislation. It is our aim to call attention to global population stabilization, to give it focus, and to make it a vital part of U.S. foreign aid and development assistance programs. We need to begin to make much-needed policy changes in international population stabilization, and the United States needs to take this lead to ensure that these new policy developments are recognized worldwide. This one is long overdue.

Mr. President, I ask unanimous consent to have printed in the RECORD a summary of the bill.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SUMMARY: INTERNATIONAL POPULATION STABILIZATION AND REPRODUCTIVE HEALTH ACT

The International Population Stabilization and Reproductive Health Act lays the foundation for a coordinated U.S. foreign aid strategy, consistent with the Programme of Action endorsed at the 1994 International Conference on Population and Development. This strategy will: help achieve world population stabilization; encourage global economic development and self-determination; and improve the health and well-being of women and their children.

The Act recognizes that worldwide efforts to alleviate poverty, stabilize population, and secure the environment have been significantly undermined by the lack of attention to women's reproductive health and the role of women in the economic development of their families, their communities, and their countries.

1. POLICY AND PURPOSE

A. Key Objectives: To help stabilize the world's population, improve the health and well-being of families, provide greater self-determination for women and ensure the role of women in the development process, and protect the environment, key objectives of U.S. foreign policy will be to:

Assist in the worldwide effort to achieve universal access to safe, effective, and voluntary family planning services;

Promote access to quality reproductive health care for women and primary health care for their children; and

Support the global expansion of basic literacy, education, and economic development opportunities for women.

B. Expenditure Targets: To promote the objectives, expenditure targets for population assistance are:

Global Target: $17 billion by 2000 (total domestic and international)

U.S. Target: $1.85 billion by 2000.

2. U.S. POPULATION ASSISTANCE PROGRAMS

U.S. population assistance will be available to international governments; multilateral organizations, including the United Nations and the UN Population Fund; and nongovernmental organizations.

A. Authorized Activities include:

Affordable, culturally-competent, and voluntary family planning and reproductive health services and educational outreach efforts particularly those designed, monitored, and evaluated by women and men from the local community;

Research on safer, easier to use, and lower-cost fertility regulation options and related disease control for women and men that: are controlled by women; are effective in preventing the spread of sexually transmitted diseases (STDs); and encourage men to take greater responsibility for their own fertility;

Efforts to prevent and manage complications of unsafe abortions, including research and public information dissemination;

Adolescent programs to prevent teen pregnancy, prevent the spread of STDs, and promote responsible parenting; and

Prenatal and postnatal programs that include breastfeeding as a child survival strategy and means for enhancing birth spacing.

B. Conditions on Eligibility for Support:

Largest share of U.S. population assistance will be made available through nongovernmental organizations;

Assistance priority to countries that account for a significant portion of the world's population growth; have significant unmet needs in the delivery of family planning services; or are committed to population stabilization through the expansion of reproductive choice;

Programs receiving support must maintain privacy and confidentiality standards; must support HIV–AIDS prevention; promote responsible sexual behavior; and may not deny services based on ability to pay;

No U.S. funds may be used to coerce any person to accept any method of fertility regulation or undergo contraceptive sterilization or involuntary abortion.

3. Economic and Social Development Assistance: U.S. development assistance will be available to help improve educational and economic opportunities for girls and women and improve the health status of women and their children.

Education: Priority assistance to countries that have adopted strategies to help ensure achievement of the goal of universal primary education of girls and boys before 2015.

Economic Productivity: Priority assistance to governments and nongovernmental organizations for programs that help women increase their productivity through vocational training and access to new technologies, extension services, credit programs, child care, and through equal participation of women and men in all areas of family and household responsibilities.

Women's Health: Priority assistance to governmental and nongovernmental programs that increase the access of girls and women to comprehensive reproductive health care services, including HIV–AIDS prevention and the prevention of other STDs.

Children's Health: Priority assistance to governmental and nongovernmental programs that are aimed at reducing malnutrition; increasing immunization rates; reducing the number of childhood deaths resulting from diarrheal diseases and respiratory infections; and increasing life expectancy at birth to greater than 70 years of age by 2005.

Violence Prevention: Priority assistance to governmental and nongovernmental programs which are aimed at eliminating all

forms of exploitation, abuse, and violence against women and children.

4. Safe Motherhood Initiative: The Act authorizes the ''Safe Motherhood Initiative,'' which helps girls and women world-wide gain access to comprehensive reproductive health care, including:

fertility regulation services;

prenatal care and high-risk screening;

supplemental food programs for pregnant and nursing women;

child survival and other programs that promote breastfeeding;

prevention and treatment of STDs, including HIV–AIDS;

programs aimed at eliminating traditional practices injurious to women's health, including female genital mutilation; and

programs promoting midwifery and traditional birth attendants.

5. Reports:

A. Annual Report: To assess progress toward the Act's objectives and expenditure targets, the President will submit an annual report to the Congress which:

estimates international population assistance by government, donor agencies, and private sector entities;

analyzes population trends by country and region; and

assesses by country availability and use of fertility regulation and abortion.

B. Expenditure Target Report: To determine expenditure targets for economic and social development activities, the President will prepare a report which:

estimates the resources needed, in total and by entity, to achieve the education, productivity, and health initiatives in the Act;

identifies legal, social, and economic barriers to women's self-determination and to improvements in the economic productivity of women;

describes existing initiatives aimed at increasing the women's access to education, credit, and child care and new technologies for development; and

describes causes of mortality and morbidity among women of childbearing age around the world and identifies actions and resources needed to address them.

C. Report on Discrimination: Each annual country human rights report will include information on patterns within a country of discrimination against women in inheritance laws, property rights, family law, and access to credit, technology, employment, education, and vocational training.

6. Authorization of Appropriations:

A. Section 104(g)(1): $635 million is authorized for Fiscal Year 1996, $695 million for FY95, for section 104(g)(1) of the Foreign Assistance Act of 1961.

B. Development and Economic Assistance Activities: Authorized levels are:

$165 million in FY96 and $200 million in FY97 to increase primary and secondary school enrollment and equalize levels of male and female enrollment;

$330 million for FY96 and $380 million for FY97 through the Child Survival Fund for child survival activities, including immunization and vaccines initiatives;

$100 million for FY96 and FY97 for the Safe Motherhood Initiative.

C. AIDS Prevention and Control Fund: $125 million is authorized for FY96, $145 million for FY97, for research, treatment, and prevention of HIV–AIDS.

Mr. SIMPSON. Mr. President, we are going to hold hearings on this. Those hearings will be held in my Subcommittee on Social Security and Family Policy. We are going to take this one very seriously. There is no need to talk about what is going to happen to the environment because of methane gas in cows, and how much propellant is in the bottom of the shaving cream can, when the population of the Earth will double in the next 40 years, and how many footprints will the Earth hold. It is very simple.

Mr. BINGAMAN. Mr. President, I want to compliment my colleague who is the prime sponsor of this bill in this Congress, and I am pleased to cosponsor the bill with him. I want to compliment him for his leadership on this very important issue. He has been a leader in trying to deal with the problem of how to stabilize population growth in the world for a very long period of time.

Today, we are reintroducing the International Population Stabilization and Reproductive Health Act. I also believe that this is a very important piece of legislation and has the potential of providing substantial benefits to this country over the coming decades.

I think we have already benefited greatly from the very modest investment we have made in sustainable development and in population efforts.

From my perspective, just as the Senator from Wyoming was saying, the attention to global population issues and support for worldwide development is critical to our future success here in this country.

We have joined, Senator SIMPSON and I, with Congressman BEILENSON and Congresswoman MORELLA, to introduce an earlier version of this in the last Congress, the 103d Congress.

The bill we are introducing today, like the previous bill, will focus U.S. foreign policy on a coordinated strategy to accomplish three things. No. 1, to achieve world population stabilization; No. 2, to encourage global economic development and self-determination for all women; No. 3, to improve the health and well-being of women and their children.

These three objectives are inseparable. To be successful, U.S. foreign policy needs to integrate population strategies and programs into our broader economic and development agenda. The way I see it, the U.S. efforts to help develop economies around the world, to promote democracy around the world, all of those efforts will be futile if we do not first address this issue of the staggering rate of global population growth.

How can we expect underdeveloped countries to pull themselves up when the world's population is growing at a rate of over 10,000 people per hour? When the women and men who make up a nation's work force pool do not even have the right to plan their families? And when millions of women around the world do not have access to basic and lifesaving reproductive health care or educational opportunities?

The 1994 U.N. International Conference on Population Development, which Senator SIMPSON attended and Senator KERRY attended, from this body, focused the world's attention on these issues and began a new era in population and development. At that Cairo conference, Senator SIMPSON indicated there was a program of action that was adopted as a consensus document. That program of action is the foundation for the legislation that we are introducing today. It clearly puts human beings at the center of development activities and encourages the international community to address global problems by meeting individual needs. It calls for gender equity and equality, for women to have and exercise choices in their economic and public and family lives, and for making reproductive health care available throughout the world.

The program of action which was adopted in Cairo recognizes that some significant worldwide progress has already been made in the last few decades, including lower birth and death rates in most parts of the world, reduced infant mortality, increased life expectancy, a slight rise in educational attainment, and a slight narrowing in the gap between the educational levels of men and women.

However, the Cairo Programme of Action, along with the State of Population Report, which was released just 2 days ago by the U.N. Population Fund, also recognized that a tremendous additional amount needs to be done. At the core of both the International Programme of Action and the United Nations report are two fundamental concepts. They are, first of all, that population, poverty, patterns of production and consumption, and the environment are so closely interconnected that none can be considered in isolation. And, second, that sustained economic growth, sustainable development in population, are fundamentally dependent upon investing in people; more specifically, on making advances in education and in economic status and in the empowerment of women.

This legislation, which I am very proud to cosponsor with Senator SIMPSON in this Congress, represents a significant step forward. I sincerely hope our colleagues in the Senate will give it a careful look. I commend him for scheduling a hearing this next week, at which we can explore the issues in more depth, and I look forward to working with him throughout the rest of this Congress in trying to see this legislation enacted into law.

Mr. SIMPSON. Mr. President, I certainly concur. I look forward to working with my friend from New Mexico. Hearings will start next week, and we will be about our business. That is something that is very clear.

By Mr. REID (for himself, Mr. SIMPSON, Mr. WELLSTONE, and Ms. MOSELEY-BRAUN):

S. 1030. A bill entitled the ''Federal Prohibition of Female Genital Mutilation Act of 1995''; to the Committee on the Judiciary.

THE FEDERAL PROHIBITION OF FEMALE GENITAL MUTILATION ACT OF 1995

● Mr. REID. Mr. President, last September I introduced a sense-of-the-Senate resolution condemning the practice of female genital mutilation [FGM]. I was compelled to react after I read an article in the newspaper reporting the arrest of two men in Egypt who arranged for the filming of this appalling ritual procedure being performed on a 10-year-old girl for the Cable News Network [CNN]. Last October, Senators WELLSTONE, MOSELEY-BRAUN, and myself introduced legislation that would ban this practice and today, along with Senator SIMPSON, we again introduce such legislation.

I realize the significance of the ritual in the culture and social system of the communities in Africa, Asia, and the Middle East. However, I cannot ignore the cruel and torturous nature of this procedure which is generally performed on very young girls who do not have a choice in what is about to happen to them. The immediate effects of the procedure are bleeding, shock, infections, emotional trauma, and even death because of hemorrhage and unhygienic conditions. As adults, complications during pregnancy and labor can occur.

Although FGM is most prevalent in Africa, Asia, and the Middle East, it is not confined to these areas. It is estimated that over 80 million young girls and women have been mutilated in this ritual. Excision and infibulation are the most common practices. Infibulation, which is practiced in many countries, entails the excision of all of the female genitalia. The remaining tissue is stitched together leaving only a small opening for urine and menstrual flow. FGM has no medical justification for being performed on healthy young girls and women. In Egypt, mothers perpetuate the tradition to shield their girls from lust and to make sure they will be accepted in marriage. They believe an uncircumcised women cannot control her sexual appetite, or if married, likely to commit adultery.

Although I believe this practice is a torturous act when performed on any woman, I am most concerned about it being performed on children and young girls under the age 18—in other words, below the age at which a child can give consent. A child does not have the ability to consent or understand the significance and the consequence this ritual will have on her life, on her health, or on her dignity. Young girls are tied and held down, they scream in pain and are not only physically scarred, but they are emotionally scarred for life.

Many nations have made efforts to deter the practice of FGM with legislation against its execution as well as creating educational programs for women. The United Kingdom outlawed FGM in 1985 after a BBC documentary revealed that British doctors were performing the procedure on children whose families had immigrated. Unfortunately, despite these initiatives, the societal pressures are too much to overcome. Sudan is a prime example of the failure of honest efforts to deter the practice. Sudan has the longest record of efforts to combat the practice of FGM and has legislated against the procedure. Yet, according to the 1992 Minority Rights Group report, 80 percent of Sudanese women continue to be infibulated. Nevertheless, as stated in my sense-of-the-Senate resolution, it is important that any effort by a nation to curb FGM be recognized and commended.

The most successful endeavors to prevent FGM has been at the grassroots level led by women, many of whom have undergone this excruciating operation, with support from the World Health Organization, UNICEF, and other international human rights groups. African and Arab women have begun to speak out and we must do all we can to support their efforts. They are working under difficult circumstances and often in hostile social environments for the preservation of a woman's health, dignity, and human rights. We must work to support and encourage their efforts to end this violent degradation of female children throughout the world.

Primarily, we must join other countries in legally banning FGM. As immigrants from Africa and the Middle East travel to other nations, the practice of FGM travels with them. The United Kingdom, Sweden, and Switzerland have all passed legislation prohibiting FGM in their countries. France and Canada maintain that FGM violates already established statutes prohibiting bodily mutilation and have taken action against its practice. The United States is also faced with the responsibility of abolishing this specific practice within its borders. Traditional child abuse interventions do not sufficiently address the problem.

FGM is difficult to talk about, but ignoring this issue because of the discomfort it causes us does nothing but perpetuate the silent acquiescence to its practice. The women of Africa and the Middle East are standing up against tremendous pressure and defiance to fight for the health and dignity of their sisters, friends, mothers, and daughters. The least we can do is support and encourage their struggle and to continue to talk about FGM and to condemn its practice. Education will be our most important and effective tool against FGM, and I intend to do my part to educate my colleagues, my constituents, and my friends to the horrors of this ritual practice.

In hopes to educate the public, our legislation provides for research on the prevalence of FGM in the United States. Furthermore, our bill provides that medical studies be aware of the ritual and be trained in how to treat effected women, and it will make illegal the denial of medical services to any woman who has undergone FGM procedures in the past.

Seble Dawit and Salem Mekuria, two African women who are working to end FGM, described the challenges to abolishing FGM. ''We do not believe that force changes traditional habits and practices. Genital mutilation does not exist in a vacuum but as part of the social fabric, stemming from the power imbalance in relations between the sexes, from levels of education and the low economic and social status of most women. All eradication efforts must begin and proceed from these basic premises.''●

● Mr. WELLSTONE. Mr. President, the issue of female genital mutilation [FGM] was first brought before the Senate last September when Senator REID introduced a sense-of-the-Senate resolution condemning this cruel ritual practice and commending the Government of Egypt for taking quick action against two men who performed this deed on a 10-year-old girl in front of CNN television cameras. Last October, Senators REID and MOSELEY-BRAUN and I introduced a bill entitled Federal Prohibition of Female Genital Mutilation Act of 1994. At that time we committed ourselves to working on this issue until legislation passes that bans the practice of female genital mutilation in the United States.

The bill we are introducing today would accomplish this goal by making it illegal to perform the procedures of FGM on girls younger than 18. In addition, this legislation proscribes the following measures as necessary to the eradication of this procedure: compiling data on the number of females in the U.S. who have been subjected to FGM, identifying communities in the United States in which it is practiced, designing and implementing outreach activities to inform people of its physical and psychological effects, and developing recommendations for educating students in medical schools on treating women and girls who have undergone mutilations. I am proud to be a cosponsor of an act that addresses an issue so crucial to the mental and physical health of women and girls.

The ritual practice of female genital mutilation currently affects an estimated 80 million women in over 30 countries. Although FGM is most widespread in parts of Africa, the Middle East, and the Far East, immigrants from practicing groups have brought the custom to wherever they have settled, including the American cities of New York, Seattle, Portland, San Francisco, and Washington, DC. This tradition is sometimes euphemistically referred to as ''female circumcision,'' a dangerously misleading label which encourages us to think of the procedure as nothing more significant than the culturally required removal of a piece of skin.

A closer examination of the issue makes it clear that female genital mutilation is in fact the ritual torture of

young girls. In her Washington Post article, Judy Mann describes female genital mutilation as ''the ritualized removal of the clitoris and labia in girls—from newborns to late adolescents. In its most extreme form, a girl's external sexual organs are scraped away entirely and the vulva is sewn together with catgut, leaving a hole the size of a pencil for urine and menses to pass through. Her legs are bound together for several weeks while a permanent scar forms.''

In the countries and cultures of its origin, FGM is most commonly performed with crude instruments such as dull razor blades, glass, and kitchen knives while the girl is tied or held down by other women. In most cases, anesthesia is not used. Afterwards, herb mixtures, cow dung, or ashes are often rubbed on the wound to stop the bleeding.

Aside from the obvious emotional and physical trauma which are caused by this procedure, it has been estimated that 15 percent of all circumcised females die as a result of the ritual. The long term effects dealt with by American doctors who treat mutilated women and girls are listed by the New England Journal of Medicine as including chronic pelvic infections, infertility, chronic urinary tract infections, dermoid cysts (which may grow to the size of a grapefruit), and chronic anxiety or depression.

Although female genital mutilation has sometimes been viewed as a purely cultural phenomena, it is clear that no ethical justification can be made for this inhumane practice in any country.

The unacceptable nature of FGM by international human rights standards was underscored by the World Health Organization on May 12, 1993, when it adopted a resolution which highlighted the importance of eliminating harmful traditional practices affecting the health of women, children and adolescents. This resolution explicitly cited female genital mutilation as a practice which restricts ''the attainment of the goals of health, development, and human rights for all members of society.'' In 1993, the Vienna Declaration of the World Conference on Human Rights also held that FGM is an international human rights violation.

Additionally, FGM has already been banned in many Western nations. In 1982, Sweden passed a law making all forms of female circumcision illegal, and the United Kingdom passed a similar law in 1985. France, the Netherlands, Canada, and Belgium have each set a precedent for the illegality of female circumcision by holding that it violates laws prohibiting bodily mutilation and child abuse. Action has been taken to enforce the statutes banning this practice in all the countries I've just mentioned.

However, due to complex cultural factors, dealing with this issue in the United States require more than making the ritual practice of FGM illegal. Immigrant parents in the United States who import a circumciser from their home country or find an American doctor willing to perform the procedure claim to do so out of a desire to do the best thing for their daughters. In the societies and cultures that practice it, FGM is said to be an integral part of the socialization of girls into acceptable womanhood. Often, the mutilations are perceived by a girl's parents as her passport to social acceptance or the required physical marking of her marriageability. In spite of its obvious cruelty therefore, FGM is a part of cultural identity. Clearly, female genital mutilation must be dealt with in a manner which takes into account its complex causes and meanings.

Because of the complexity of this issue and the lack of available information regarding FGM in the United States, this bill includes a provision ensuring that research be carried out to determine the number of females in the U.S. who have undergone mutilations. This research would also document the types of physical and psychological damage dealth with by American medical professionals who treat mutilated women.

The bill also requires that we investigate approaches such as the one used in Great Britain where child protection networks are used to identify at risk girls and trained professionals are assigned to work with their families.

Finally, the legislation would ensure that medical students are educated in how to treat women and girls who have undergone FGM. In 1994, the New England Journal of Medicine reported that pregnant women who have undergone infibulation—in which the labia majora are stitched to cover the urethra and entrance to the vagina—are at serious risk, as are their unborn babies, if treated by physicians who have not been trained in dealing with infibulated women. In fact, untreated infibulated women have double the risk of maternal death and several times increased risk of stillbirth when compared with women who have not undergone mutilation.

The education of medical students regarding FGM is especially essential as under this bill it would be considered illegal to discriminate or deny medical services to any woman who has undergone FGM procedures.

Passage of a bill banning FGM would have helped Lydia Oluloro who fought her deportation and that of her two daughters on the grounds that her sister had threatened to kidnap the girls and have the mutilations performed on them if they were forced to return to their native Nigeria.

Passage of this bill would also send a clear message to American medical professionals, some of whom reportedly have been offered as much as $3,000 to perform mutilations on young girls. It would see to it that the names of Western doctors who mutilate girls would no longer be passed around in immigrant communities. It would help in prosecuting cases resembling the one faced by the Atlanta district attorney in 1986 in which an African-born nurse was charged with child abuse after botching a clitoridectomy on her 3-year-old niece, and it would ensure that immigrants are educated as they enter the country regarding the operations's illegality and its dangers.

Female genital mutilation is the world's most widespread form of torture, yet no other mass dilation of humanity has received so comparatively little journalistic or governmental attention. We in the United States should make it clear that it is a serious crime if it occurs here. I urge my colleagues to support this legislation as an essential tool in the struggle against the perpetuation of this heinous practice.●

● Ms. MOSELEY-BRAUN. Mr. President, I am very pleased to join Senator REID, Senator WELLSTONE and Senator SIMPSON as an original cosponsor to the Federal Prohibition of Female Genital Mutilation Act of 1995.

Male circumcision is a procedure with a long history. It is a common, accepted practice in the United States for male babies to be circumcised. In the Jewish religion, tradition dictates that a baby boy be circumcised when he is 8 days old in a special ceremony to symbolize the covenant between God and the children of Israel. It is quick, relatively painless, and without long-term consequences—for men.

For women, however, circumcision is another matter altogether. The procedure known as female circumcision is not at all benign. It is mutilation.

Eighty million women worldwide have been mutilated by female circumcision. The procedure is most widely seen in eastern and western Africa, and a number of Middle Eastern countries. And as communities from African countries immigrate to the United States, we are tragically seeing more and more cases of genital mutilation in this country. That is why this legislation is so important.

I am concerned that in this country there are misperceptions that this procedure is part of African and Islamic culture and tradition, and that the Government should not interfere. Nowhere in Muslim scripture is female circumcision required. It is not practiced in Saudi Arabia, the cradle of Islam. Historically, the procedure dates back before the rise of the Moslem religion to the times of the Pharaoh in Egypt.

In countries where the practice is not universal, female genital mutilation is more common among poor, uneducated women, and it is inextricably tied to the status of women in the community. In these societies, women who have not been circumcised are considered unclean, and unmarriageable. In communities where the only role for a women is to be married and have children, the fear of being labeled unmarriageable is enormous and real.

Ironically, that is why women are the strongest supporters of this practice. It is the older women who know best about how an uncircumcised woman in a traditional village will be treated. Girls are taught that with circumcision, they enter womanhood. Mothers encourage the mutilation because they want their daughters to marry—because marriage is the only access to a meal ticket. And men support the custom because a woman who is circumcised is considered chaste. In short, circumcision is a passport into the only role that some societies give women.

As a woman and a mother, I can't imagine leading a child to this kind of torture.

I want to raise awareness of this practice. This is mutilation of otherwise healthy women, pure and simple. We must work together to stop teaching girls that undergoing this kind of butchery is essential to their future.

Mr. President, there are very serious health risks associated with the practice of female genital mutilation that do not exist with male circumcision. This practice is most often performed by midwives or other women elders with little or no medical training. It is performed without anesthetic or sanitary tools. Often, the cut is made with a razor blade or a piece of glass.

The New England Journal of Medicine has examined female genital mutilation as a public health issue. They report that women often hemorrhage after the cutting. Prolonged bleeding may lead to severe anemia. Urinary tract infections and pelvic infections are common. Sometimes, cysts form in the scar tissue. The mutilation can also lead to infertility.

At childbirth, circumcised women have double the risk of maternal death, and the risk of a stillbirth increases several fold. And because the cutting is performed without sanitary tools, female genital mutilation has become a means of spreading the HIV virus. There are no records of how many girls die as a result of this practice.

Mr. President, Sweden, Britain, The Netherlands, and Belgium have outlawed this practice. In France, it is considered child abuse. The United States has an important role to play as well. Two years ago, the world health organization adopted a resolution on maternal child health and family planning for health sponsored by Guinea, Kenya, Nigeria, Togo, Zambia and Lebanon that highlights the importance of eliminating harmful traditional practices, includings female genital mutilation, affecting the health of women, children and adolescents.

Banning this practice in the United States is just the first step toward eradicating it. Girls must be taught that they will have opportunities, both in marriage and outside the home, if they are not mutilated. Mothers must believe that their daughters will have a place in the community if they are not circumcised. And men must be taught that the terrible health risks involved with the procedure far outweigh their belief that a circumcised woman is a more suitable bride.

I want to commend the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children, for their work in Africa over the last 10 years to educate women so that this practice can be abolished. It will take much more than Government statements against the procedure to eradicate the tradition.

Mr. President, no woman, anywhere, should have to undergo this kind of mutilation, not to get a husband, not to put food on the table, not for any reason. Female circumcision is, in the final analysis, about treating women as something less than people. It must be stopped. It has no place in today's world.●

By Mr. THOMAS (for himself, Mr. SIMPSON, Mr. BURNS, Mr. CRAIG, Mr. STEVENS, Mr. KEMPTHORNE and Mr. HELMS):

S. 1031. A bill to transfer the lands administered by the Bureau of Land Management to the State in which the lands are located; to the Committee on Energy and Natural Resources.

BLM LEGISLATION

Mr. THOMAS. Mr. President, I rise to introduce legislation that would transfer the lands managed by the BLM in the various States to State control. This bill is not a new one. We have had it in last year. But it is a commonsense approach that supports the goal of good government, supports the goal of bringing government closer to the people, and a necessary reform in the way that public lands are managed.

Currently, the BLM, the Bureau of Land Management, manages nearly 270 million acres of land in the United States, most of it, of course, in the West. Wyoming, for example—nearly 50 percent of Wyoming is owned by the Federal Government, much of it managed by the BLM. In some other States, it is more—86 percent in Nevada. So when half of your State is managed by the Federal Government, it has a great deal to do with your future. It has a great deal to do with the economy and growth, because these are multiple use lands.

Let me make a point originally that is very important to this bill. We are talking about Bureau of Land Management lands. We are not talking about Forest Service. We are not talking about wilderness. We are not talking about parks—lands that are set aside with particular purpose, lands that had a particular character. BLM lands are residual lands that were left when the homesteaders came in the West and took the land that is along the river and took the winter feed and took the best land. That land that was left was managed by the Federal Government.

Indeed, in the early acts that had to do with managing that land, it said ''manage it pending disposal.'' The notion was never to maintain them. So we are talking about a fundamental change and that is sort of what we are doing in this Congress, looking at some fundamental changes in the way we operate Government. It moves Government closer to the people, and that is what it is all about. It helps to reduce the size and cost of the Federal Government and transfers this function to the State as we are talking about transferring others.

It would have to do with the budget. It would, indeed, save money for the budget of the United States. There will be less money going to the Department of Interior. That is just the way it is. So the priorities will have to be established. We heard a lot about not being able to finance national parks, and that is actually going to be the case. So what it does is set some priorities as to where that money ought to be.

There is a fairness doctrine here. The States east of the Missouri River do not have half of their lands belong to the Federal Government. So there is a fairness question. Why should the State not have these lands? There is a question of States rights. Many maintain the Constitution does not provide the authority for the Federal Government to maintain those lands that have no specific use. I do not argue that. Others say we ought to get control by having the counties do zoning. They do that some in Arizona. That is an idea. I say, let us move them back to the States and let the States manage them as public lands. These will be multiple use lands, for hunting, for fishing, for grazing, for mineral development.

If you have ever seen a map of the West, you will see a strange ownership pattern. There are lands spread around over the whole State. One of the most unusual is the checkerboard, what we call the checkerboard, that runs all the way through Wyoming and through much of the West, when every other section was given to the railroads early on, 20 miles on either side of the railroad. So those checkerboards still belong to the Federal Government with deeded lands in between.

These are low production lands. These are not national parks. These are very low rainfall, low moisture content areas, so they are very unproductive. It takes a great deal of land to support one cow-calf unit.

Along with the House—there will be an identical bill in the House that will be introduced to transfer these lands to the State. Actually, in order to have time to accommodate that, in order to do something with the budgeting, that would be a 10-year period before they would be transferred. But we almost constantly have a conflict between the States, between the users —whatever they are, whether they are commodity users or recreational users—and the Federal land managers. And these folks do a good job. I have no quarrel with the managers. I just think, as many

others do, the closer you are, with Government, to the people who are governed, the more likely it is to be a successful effort.

So I urge my colleagues to support this legislation. It will help reduce the Federal budget. It will certainly increase individual States rights. It will keep the BLM lands in public lands so they are available for access for everyone. Finally, and perhaps most important of all, it provides fairness and equity for Western States, each of whom would have the option.

The time has come for the Federal Government to release the stranglehold on the Western States and let us manage our own affairs.

I join my colleagues in the effort to reform the way public lands are managed.

● Mr. CRAIG. Mr. President, I would like to compliment Senator THOMAS for bringing this bill forward and opening what I hope will be an enlightening discussion.

The subject matter of this bill is of great consequence in the Western States. The sheer size and proportion of Federal ownership in the West not only contrasts dramatically with the situation in Eastern States, but it is the source of much of the conflict in this country over the use of public lands. A quick look at a U.S. map of government lands dramatically illustrates the differences. Sixty to 80 percent of many Western States are federally owned, while the comparison east of the 100th meridian is typically less than 5 percent. Westerners feel this is inequitable, and some claim it is unconstitutional. They feel burdened by Federal regulation in their daily lives. They feel burdened by Federal regulation in their daily lives. Such sentiment is poorly understood in nonpublic land States.

This bill would improve the balance of State and Federal lands in the West and dissolve some of the source of discontent. It would give citizens more control over their lives through State government. For example, in Idaho BLM controls 12 million acres, or 22 percent of the State. Other Federal agencies control an additional 41 percent. Transfer of BLM ownership to the State would dramatically change the ownership equation to one of much fairer balance.

Nationwide, the Bureau of Land Management oversees 272 million acres, or 41 percent of the total Federal ownership. Nearly all of this is in the West, and it consists largely of those lands remaining in the public domain after the national parks, national wildlife refuges and national forests were set apart and placed under management of other Federal agencies.

The concept of State management or ownership of Federal lands, in this case the lands of the Bureau of Land Management, has surfaced before. But there has never been a better time to seriously examine the issue.

Congress has agreed to balance the Federal budget by 2002. That goal demands that we investigate new ways of doing business throughout the Federal Government. It may be that the States can own and manage the BLM lands and the underlying mineral estate at much less cost, while protecting the environment and maintaining public access and the many uses of these lands and waters.

I see no reason why that can't be done, and if it can, it would be desirable in several ways: Management costs would decrease, placing less burden on the taxpayers in the long run; management decisions would be made instate with more opportunity for residents to have their voices heard; existing State programs for recreation, grazing, wildfire suppression and environmental protections, such as water quality standards, could be integrated with similar BLM programs for economies of scale and consistency.

I am cosponsoring Senator THOMAS' bill to encourage debate on these issues. This bill is a starting point. The considerations in each State will differ, of course, and there are a number of amendments which would be needed to address the situation in the State of Idaho. The bill already protects designated wilderness, but we would need to provide for State consideration of more than 900,000 acres recommended for wilderness additions. Our national historic trails, wild and scenic rivers, the Snake River Birds of Prey Area, and other areas of special concern must be maintained.

I should emphasize this bill would not require State ownership. It would offer the opportunity for States to accept ownership and management, only if they elect to do so. Governor Batt, the State legislature, and Idaho interest groups would have 2 years to consider whether to accept the 11 million acres of BLM lands in the State. That seems sufficient time for a thorough airing of the pros and cons. Governor Batt has indicated his willingness to explore the possibilities.

I am sensitive to the fact that mere consideration of this legislation will cause some anxiety among BLM employees, and that concerns me. I will guarantee that employee options will be thoroughly discussed, and resolution on a fair transition reached, as this bill moves through the legislative process. The bill already provides a 10-year transition period from the time of acceptance by a State to actual transfer of ownership.

Some interest groups will immediately attack this legislation as a threat to environmental protections. They should stop and think. These same groups have shown their obvious dissatisfaction with Federal ownership through appeals and court challenges of management decisions. They have complained to me that the short tenure of Federal managers weakens decisionmaking and discourages accountability in the long run. They have argued that the citizens of Idaho support environmental programs and want a greater voice in their management. Potentially, this bill could satisfy all those concerns, and at far less cost to the taxpayers.

For all these reasons, I am an original cosponsor of this legislation.●

By Mr. ROTH (for himself and Mr. BAUCUS):

S. 1032. A bill to amend the Internal Revenue Code of 1986 to provide nonrecognition treatment for certain transfers by common trust funds to regulated investment companies; to the Committee on Finance.

COMMON TRUST FUND LEGISLATION

● Mr. ROTH. Mr. President, today together with Senator BAUCUS, I am introducing the Common Trust Fund Improvement Act of 1995—In short, this legislation would allow banks to move assets of their common trust funds to one or more mutual funds without gain or loss being recognized by the trust funds or their participants.

Bank common trust funds have been used by banks since World War II to collectively invest pools of monies in their capacities as trustees, executors, administrators, or guardians of certain customer accounts for which they have a fiduciary responsibility. At present, there are more than $120 billion in assets residing in bank common trust funds, but little if any new money is flowing into these common trust funds. By allowing the conversions under this legislation, banks can reduce investment risk and, in some cases, increase total investment return for their customer accounts by using larger, more diversified and efficient investment pools for asset allocation.

Mutual funds are the pooling vehicle of choice because they can grow into much larger investment pools than can common trust funds. By law, the participants in a bank's common trust fund are limited to that bank's fiduciary customers. Mutual funds can be offered to all types of investors. Thus, the conversion of bank common trust fund assets into mutual funds is really a transitional issue, permitting financial institutions the ability to provide their existing trust customers with the same efficient and safe investment vehicles that they are providing to their new customers. The conversion of their common trust funds into one or more mutual funds would also benefit banks by providing them with one set of investment pools to manage.

This legislation is necessary because it appears that the conversion of common trust fund assets into one or more mutual funds would, under current law, trigger tax to the participants of the common trust fund, an event that could be viewed under State laws as a breach of a bank's fiduciary responsibilites. Thus, at present, banks generally are finding it prohibitive to convert their common trust funds into more economically efficient mutal funds.

Permitting tax-free conversions of a common trust fund's assets to more

than one mutual fund would allow the more diverse common trust assets to be allocated to several mutual funds according to the appropriate investment and other objectives of the mutual funds. While the multiple conversion feature will benefit all banking institutions, it is particularly significant for small and medium-size banks with smaller common trust funds; these institutions generally find it far too costly to create their own mutual funds, and they are not likely to find a single third party mutual fund for each common trust fund able to accept substantially all the assets of the common trust fund.

While this legislation has been estimated to cost less than $100 million over five years, I am very mindful of the need to ensure that tax-law changes, no matter how appropriate and essential, do not add to the federal deficit that we are all trying so hard to eliminate. Therefore, it may be necessary to modify this proposal in order to reduce its revenue cost to a negligible level. Unfortunately, as is the case with many tax policy changes, modifications to the legislation that address revenue concerns may make the proposal more complex to administer, however, I am willing to make this trade off if it becomes absolutely necessary in order to include this legislation in a revenue bill later this year. In addition, I intend to introduce legislation soon—also related to financial institutions—to create financial securitization investment trusts [FASITs] that should provide the necessary revenue offset to pay for this proposal.

My legislation addresses an important business issue for large and small banks, and an important investment issue for their customers. Versions of this legislation have passed the Congress on two separate occasions with my strong support in the Senate. Given its modest cost, its noncontroversial nature and its widespread support, I am hopeful that this much needed legislation will be enacted this year.

Let me make a few short comments to summarize why I believe this legislation to permit conversions of common trust funds into mutual funds without the recognition of gain or loss should be enacted:

It will permit all bank customers, not just trust customers, more options for investing their savings.

It will make banks more competitive. Many savers are abandoning bank certificates of deposit for the competition, and banks are unable to offer their customers an option.

Customers are unfamiliar with common trust funds, but do understand mutual funds. Therefore, mutual funds are more attractive to them.

The conversion is like a merger of two existing registered funds which allows securities to move intact from one fund to another with no tax consequences, so there is no ''sale''. The participant's underlying investment is unchanged. As a result, we also believe that there should not be a revenue loss associated with this proposal. No revenue would be gained under current law, because banks have a fiduciary duty to their customers and they would not incur a capital gains tax in order to make the conversion unless this law is changed. Therefore, the idea that retaining current law will somehow result in more revenue is misplaced.

PROPOSAL TO PERMIT TAX-FREE CONVERSION OF COMMON TRUST FUND ASSETS TO ONE OR MORE MUTUAL FUNDS

CURRENT LAW

Banks historically have established common trust funds in order to maintain pooled funds of small fiduciary accounts. Under section 584, common trust funds must be maintained by banks exclusively for the collective investment of monies in the banks' capacity as trustee, executor administrator, or guardian of certain accounts, in conformity with rules established by the Federal Reserve and the Comptroller of the Currency. Common trust funds are not subject to income tax, and they are not treated as corporations. They are a conduit, with income ''passed through'' to fund participants for tax purposes.

Mutual funds are also considered conduits under the Tax Code. Unlike common trust funds, however, mutual funds are treated as corporations. As a result of this differing tax treatment, it is unclear whether a mutual fund may merge with or acquire the assets of a common trust fund in a transaction that is tax-free to the common trust fund and its participants.

REASONS FOR CHANGE

The economic efficiencies, diversification, and liquidity of mutual funds are key reasons for their popularity and growth in recent years. These are attributes that are not generally found in common trust funds. It would be desirable for banks to convert their existing common trust funds into mutual funds so that bank customers, including trust participants, may take advantage of the benefits of mutual funds. The conversion of its common trust funds into one or more mutual funds would also benefit banks by providing them with one set of investment pools to manage.

Permitting tax-free conversions of a common trust fund to more than one mutual fund would allow the more diverse common trust fund assets to be allocated to several mutual funds according to the appropriate investment and other objectives of the mutual funds. The multiple conversions feature is particularly significant for banks with small common trust funds, which probably would not be able to find a single mutual fund with the same investment objectives of a common trust fund.

However, until current law is clarified, it appears that the conversion of common trust fund assets into one or more mutual funds would trigger tax to the participants of the common trust fund, an event that could be viewed under State laws as a breach of a bank's fiduciary responsibilities. Thus, at present, banks generally are finding it prohibitive to convert their common trust funds into more economically efficient mutual funds.

PROPOSAL

This proposal would allow a common trust fund to transfer substantially all of its assets to one or more mutual funds without gain or loss being recognized by the trust fund or its participants.

The common trust fund would transfer it assets to the mutual funds solely in exchange for shares of the mutual funds, and the common trust fund would then distribute the mutual fund shares to its participants in exchange for the participants' interests in the common trust fund. The basis of any asset received by the mutual fund would be the basis of the asset in the hands of the common trust fund prior to the conversion. In a conversion to more than one mutual fund, the basis in each mutual fund would be determined by allocating the basis in the common trust fund units among the mutual funds in proportion to the fair market value of the transferred assets.

This proposal has been designed to have a minimal cost to the Federal Treasury, and versions of this proposal have been passed by the Congress on two previous occasions. The benefits of such a change would be felt by customers of large and small banking institutions throughout the country, and has the support of both the mutual funds and banking industries.●

ADDITIONAL COSPONSORS

S. 131

At the request of Mr. LIEBERMAN, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S. 131, a bill to specifically exclude certain programs from provisions of the Electronic Funds Transfer Act.

S. 247

At the request of Mr. GREGG, the name of the Senator from Minnesota [Mr. GRAMS] was added as a cosponsor of S. 247, a bill to improve senior citizen housing safety.

S. 457

At the request of Mr. SIMON, the name of the Senator from Alaska [Mr. STEVENS] was added as a cosponsor of S. 457, a bill to amend the Immigration and Nationality Act to update references in the classification of children for purposes of United States immigration laws.

S. 470

At the request of Mr. HOLLINGS, the name of the Senator from South Carolina [Mr. THURMOND] was added as a cosponsor of S. 470, a bill to amend the Communications Act of 1934 to prohibit the distribution to the public of violent video programming during hours when children are reasonably likely to comprise a substantial portion of the audience.

S. 491

At the request of Mr. BREAUX, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 491, a bill to amend title XVIII of the Social Security Act to provide coverage of outpatient self-management training services under part B of the medicare program for individuals with diabetes.

S. 628

At the request of Mr. KYL, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 628, a bill to repeal the Federal estate and gift taxes and the tax on generation-skipping transfers.

S. 641

At the request of Mrs. KASSEBAUM, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 641, a bill to reauthorize the Ryan White CARE Act of 1990, and for other purposes.

S. 643

At the request of Mrs. MURRAY, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 643, a bill to assist in implementing the plan of action adopted by the World Summit for Children.

S. 684

At the request of Mr. HATFIELD, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of S. 684, a bill to amend the Public Health Service Act to provide for programs of research regarding Parkinson's disease, and for other purposes.

S. 692

At the request of Mr. GREGG, the name of the Senator from Indiana [Mr. LUGAR] was added as a cosponsor of S. 692, a bill to amend the Internal Revenue Code of 1986 to preserve family-held forest lands, and for other purposes.

S. 758

At the request of Mr. HATCH, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 758, a bill to amend the Internal Revenue Code of 1986 to provide for S corporation reform, and for other purposes.

S. 772

At the request of Mr. DORGAN, the names of the Senator from West Virginia [Mr. ROCKEFELLER] and the Senator from Maryland [Ms. MIKULSKI] were added as cosponsors of S. 772, a bill to provide for an assessment of the violence broadcast on television, and for other purposes.

S. 774

At the request of Mr. MACK, the name of the Senator from Pennsylvania [Mr. SANTORUM] was added as a cosponsor of S. 774, a bill to place restrictions on the promotion by the Department of Labor and other Federal agencies and instrumentalities of economically targeted investments in connection with employee benefit plans.

S. 847

At the request of Mr. GREGG, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of S. 847, a bill to terminate the agricultural price support and production adjustment programs for sugar, and for other purposes.

S. 852

At the request of Mr. BAUCUS, his name was added as a cosponsor of S. 852, a bill to provide for uniform management of livestock grazing on Federal land, and for other purposes.

S. 877

At the request of Mrs. HUTCHISON, the name of the Senator from Oklahoma [Mr. NICKLES] was added as a cosponsor of S. 877, a bill to amend section 353 of the Public Health Service Act to exempt physician office laboratories from the clinical laboratories requriements of that section.

S. 896

At the request of Mr. CHAFEE, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of S. 896, a bill to amend title XIX of the Social Security Act to make certain technical corrections relating to physicians' services, and for other purposes.

S. 923

At the request of Mr. DORGAN, the name of the Senator from Ohio [Mr. DEWINE] was added as a cosponsor of S. 923, a bill to amend title 23, United States Code, to provide for a national program concerning motor vehicle pursuits by law enforcement officers, and for other purposes.

S. 959

At the request of Mr. HATCH, the names of the Senator from Pennsylvania [Mr. SANTORUM], the Senator from Rhode Island [Mr. PELL], and the Senator from North Carolina [Mr. HELMS] were added as cosponsors of S. 959, a bill to amend the Internal Revenue Code of 1986 to encourage capital formation through reductions in taxes on capital gains, and for other purposes.

SENATE RESOLUTION 103

At the request of Mr. DOMENICI, the names of the Senator from Michigan [Mr. ABRAHAM], the Senator from Oregon [Mr. HATFIELD], the Senator from Maine [Mr. COHEN], the Senator from Kentucky [Mr. FORD], the Senator from Alaska [Mr. STEVENS], and the Senator from Kansas [Mr. DOLE] were added as cosponsors of Senate Resolution 103, A resolution to proclaim the week of October 15 through October 21, 1995, as National Character Counts Week, and for other purposes.

SENATE RESOLUTION 117

At the request of Mr. ROTH, the names of the Senator from Maine [Ms. SNOWE], and the Senator from North Dakota [Mr. DORGAN] were added as cosponsors of Senate Resolution 117, A resolution expressing the sense of the Senate that the current Federal income tax deduction for interest paid on debt secured by a first or second home located in the United States should not be further restricted.

SENATE RESOLUTION 146

At the request of Mr. JOHNSTON, the names of the Senator from Oklahoma [Mr. NICKLES], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of Senate Resolution 146, A resolution designating the week beginning November 19, 1995, and the week beginning on November 24, 1996, as ''National Family Week'', and for other purposes.

AMENDMENT NO. 1507

At the request of Mr. ROTH the names of the Senator from Louisiana [Mr. JOHNSTON], and the Senator from Ohio [Mr. GLENN] were added as cosponsors of Amendment No. 1507 proposed to S. 343, a bill to reform the regulatory process, and for other purposes.

SENATE RESOLUTION 150—RELATIVE TO THE SENATE LEGAL COUNSEL

Mr. DOLE (for himself and Mr. DASCHLE) submitted the following resolution; which was considered and agreed to:

S. RES. 150

Whereas, the plaintiffs in *Barnstead Broadcasting Corporation and BAF Enterprises, Inc. v. Offshore Broadcasting Corporation,* Civ. No. 94–2167, a civil action pending in the United States District Court for the District of Columbia, are seeking the deposition testimony of Barbara Riehle and John Seggerman, Senate employees who work for Senator John Chafee;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(2), the Senate may direct its counsel to represent employees of the Senate with respect to subpoenas or requests for testimony issued or made to them in their official capacities: Now, therefore, be it

Resolved, That Barbara Riehle and John Seggerman are authorized to provide deposition testimony in the case of *Barnstead Broadcasting Corporation and BAF Enterprises, Inc. v. Offshore Broadcasting Corporation,* except concerning matters for which a privilege should be asserted; and

SEC. 2. That the Senate Legal Counsel is authorized to represent Barbara Riehle and John Seggerman in connection with the deposition testimony authorized by this resolution.

AMENDMENTS SUBMITTED

THE COMPREHENSIVE REGULATORY REFORM ACT OF 1995

DOMENICI (AND BOND) AMENDMENT NO. 1509

(Ordered to lie on the table.)

Mr. DOMENICI (for himself and Mr. BOND) submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill (S. 343) to reform the regulatory process, and for other purposes; as follows:

AMENDMENT NO. 1509

At the appropriate place in the Dole substitute No. 1487, add the following new title:

TITLE II—AGENCY RESPONSIVENESS TO SMALL BUSINESSES

Subtitle A—Small Business Advocacy Review

SEC. 201. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) AGENCY.—The term ''agency'' means—

(A) with respect to the Environmental Small Business Advocacy Review Panel, the Environmental Protection Agency; and

(B) with respect to the Occupational Safety and Health Small Business Advocacy Review Panel, the Occupational Safety and Health Administration of the Department of Labor.

(2) AGENCY HEAD.—The term ''agency head'' means—

(A) with respect to the Environmental Small Business Advocacy Review Panel, the Administrator of the Environmental Protection Agency; and

(B) with respect to the Occupational Safety and Health Small Business Advocacy Review Panel, the Assistant Secretary for Occupational Safety and Health of the Department of Labor.

(3) CHAIRPERSON.—The term ''chairperson'' means—

(A) with respect to the Environmental Small Business Advocacy Review Panel, the chairperson of such review panel designated under section 202(a); and

(B) with respect to the Occupational Safety and Health Small Business Advocacy Review Panel, the chairperson of such review panel designated under section 202(b).

(4) CHIEF COUNSEL FOR ADVOCACY.—The term ''Chief Counsel for Advocacy'' means the Chief Counsel for Advocacy of the Small Business Administration.

(5) FINAL RULE.—The term ''final rule'' means any final rule or interim final rule issued by an agency for which a review panel has been established under section 202(c)(2)(A).

(6) OFFICE.—The term ''Office'' means the Office of Advocacy of the Small Business Administration.

(7) REVIEW PANEL.—The term ''review panel'' means—

(A) with respect to a significant rule of the Environmental Protection Agency, an Environmental Small Business Advocacy Review Panel established under section 202(c)(2)(A); and

(B) with respect to a significant rule of the Occupational Safety and Health Administration of the Department of Labor, an Occupational Safety and Health Small Business Advocacy Review Panel established under section 202(c)(2)(A).

(8) RULE.—The term ''rule''—

(A) means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of the agency; and

(B) does not include any rule that is limited to agency organization, management, or personnel matters.

(9) SIGNIFICANT RULE.—The term ''significant rule'' means any rule proposed by an agency that the chairperson, in consultation with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, reasonably estimates would have—

(A) an annual aggregate impact on the private sector in an amount equal to not less than $50,000,000; and

(B) an impact on small businesses.

(10) SMALL BUSINESS.—The term ''small business'' has the same meaning as the term ''small business concern'' in section 3 of the Small Business Act.

SEC. 202. SMALL BUSINESS ADVOCACY CHAIRPERSONS.

(a) CHAIRPERSON OF ENVIRONMENTAL REVIEW PANELS.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall designate an employee of the Environmental Protection Agency, who is a member of the Senior Executive Service (as that term is defined in section 2101a of title 5, United States Code) and whose immediate supervisor is appointed by the President, to serve as the chairperson of each Environmental Small Business Advocacy Review Panel and to carry out this subtitle with respect to the Environmental Protection Agency.

(2) DISABILITY OR ABSENCE.—If the employee designated to serve as chairperson under paragraph (1) is unable to serve as chairperson because of disability or absence, the Administrator of the Environmental Protection Agency shall designate another employee who meets the qualifications of paragraph (1) to serve as chairperson.

(b) CHAIRPERSON OF OSHA REVIEW PANELS.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Assistant Secretary for Occupational Safety and Health of the Department of Labor shall designate an employee of the Occupational Safety and Health Administration of the Department of Labor, who is a member of the Senior Executive Service (as that term is defined in section 2101a of title 5, United States Code) and whose immediate supervisor is appointed by the President, to serve as the chairperson of each Occupational Safety and Health Small Business Advocacy Review Panel and to carry out the purposes of this subtitle with respect to the Occupational Safety and Health Administration.

(2) DISABILITY OR ABSENCE.—If the employee designated to serve as chairperson under paragraph (1) is unable to serve as chairperson because of disability of absence, the Assistant Secretary for Occupational Safety and Health of the Department of Labor shall designate another employee who meets the qualifications of paragraph (1) to serve as chairperson.

(c) DUTIES OF THE CHAIRPERSON.—

(1) INITIAL DETERMINATION AND NOTIFICATION.—

(A) TIMING.—The chairperson shall take the actions described in subparagraph (B) not later than 45 days before the earlier of—

(i) the date of publication in the Federal Register by an agency of a general notice of proposed rulemaking under section 553(b) of title 5, United States Code, or any other provision of law; or

(ii) the date of publication in the Federal Register by an agency of a proposed rule.

(B) ACTIONS.—With respect to a proposed rule that is the subject of a publication described in clause (i) or (ii) of subparagraph (A), the chairperson shall—

(i) determine whether the subject proposed rule constitutes a significant rule, as defined in section 201(9); and

(ii) if the proposed rule is determined to constitute a significant rule, notify the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget and the Chief Counsel for Advocacy to appoint review panel members for evaluation of the subject significant rule.

(2) ESTABLISHMENT OF REVIEW PANELS.—

(A) IN GENERAL.—Not later than 15 days after receiving notice under paragraph (1)(B)(ii), or such longer period as the chairperson may allow, review panel members shall be appointed by the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, the Chief Counsel for Advocacy, and the chairperson in accordance with section 203(b).

(B) EXCEPTIONS.—A review panel shall be established in accordance with subparagraph (A) unless the chairperson, in consultation with the Chief Counsel for Advocacy, determines (and notifies the agency in writing of such determination) that—

(i) a good faith effort to secure enough non-Federal employee review panel members necessary to constitute a quorum with respect to the subject significant rule was unsuccessful; and

(ii) compliance with this subtitle is not required with respect to the subject significant rule due to a lack of availability of private sector interests.

(d) DUTIES REGARDING FINAL RULE.—

(1) IN GENERAL.—Not later than 45 days before the issuance of a significant final rule, the chairperson shall—

(A) notify panel members of the intent of the agency to issue a final rule;

(B) provide panel members with a dated draft of the final rule to be issued;

(C) solicit comments from panel members in connection with the duties of the review panel described in section 203(a); and

(D) if the chairperson determines that such action is necessary, call one or more meetings of the review panel and, if a quorum is present, direct the review panel to review, discuss, or clarify any issue related to the subject final rule or the preparation of the report under paragraph (2).

(2) REPORT.—Except as provided in section 204(b), not later than 5 days before the issuance of a final rule, the chairperson shall submit a report in accordance with section 204(a).

SEC. 203. SMALL BUSINESS ADVOCACY REVIEW PANELS.

(a) GENERAL DUTIES.—Before any publication described in clause (i) or (ii) of section 202(c)(1)(A) of a proposed significant rule, and again before the issuance of such rule as a final rule, the review panel shall, in accordance with this subtitle—

(1) provide technical guidance to the agency, including guidance relating to—

(A) the applicability of the proposed rule to small businesses;

(B) enforcement of and compliance with the rule by small businesses;

(C) the consistency or redundancy of the proposed rule with respect to other Federal, State, and local regulations and record-keeping requirements imposed on small businesses; and

(D) any other concerns posed by the proposed rule that may impact significantly upon small businesses; and

(2) evaluate each rule in the context of the requirements imposed under—

(A) subsections (b) and (c) of section 603, paragraphs (1) through (3) of section 604(a), section 604(b), and paragraphs (1) through (5) of section 609 of title 5, United States Code;

(B) sections 202 and 205 of the Unfunded Mandates Act of 1995 (Public Law 104–4);

(C) subsection (a) and paragraphs (1) through (12) of subsection (b) of section 1 of Executive Order No. 12866, September 30, 1993; and

(D) any other requirement under any other Act, including those relative to regulatory reform requirements that affect compliance, existing Federal or State regulations that may duplicate, overlap, or conflict with the significant rule, and the readability and complexity of rules and regulations.

(b) MEMBERSHIP.—Each review panel shall be composed of—

(1) the chairperson;

(2) not less than 1 nor more than 3 members appointed by the chairperson from among employees of the agency who would be responsible for carrying out the subject significant rule;

(3) 1 member appointed by the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget from among the employees of that office who have specific knowledge of or responsibilities relating to the regulatory responsibilities of the agency that would be responsible for carrying out the subject significant rule;

(4) 1 member appointed by the Chief Counsel for Advocacy from among the employees of the Office; and

(5) not less than 1 nor more than 3 members selected by the Chief Counsel for Advocacy from among individuals who are representatives of—

(A) small businesses that would be impacted by the significant rule;

(B) small business sectors or industries that would be especially impacted by the significant rule; or

(C) organizations whose memberships are comprised of a cross-section of small businesses.

(c) PERIOD OF APPOINTMENT; VACANCIES.—

(1) PERIOD OF APPOINTMENT.—Each review panel member, other than the chairperson, shall be appointed for a term beginning on the date on which the appointment is made and ending on the date on which the report or written record is submitted under section 204.

(2) VACANCIES.—Any vacancy on a review panel shall not affect the powers of the review panel, but shall be filled in the same manner as the original appointment.

(d) QUORUM.—A quorum for the conduct of business by a review panel shall consist of 1 member appointed from each of paragraphs (2) through (5) of subsection (b).

(e) MEETINGS.—

(1) IN GENERAL.—Subject to paragraph (2), the meetings of the review panel shall be at the call of the chairperson.

(2) INITIAL MEETING.—Not later than 15 days after all review panel members necessary to constitute a quorum have been appointed under subsection (b), the chairperson shall conduct the initial meeting of the review panel.

(f) POWERS OF REVIEW PANEL.—

(1) INFORMATION FROM FEDERAL AGENCIES.—A review panel may secure, directly from any Federal department or agency, such information as the review panel considers necessary to carry out this subtitle. Upon request of the chairperson, the head of such department or agency shall furnish such information to the review panel.

(2) POSTAL SERVICES.—A review panel may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(g) NONCOMPENSATION OF MEMBERS.—

(1) IN GENERAL.—Members of the review panel who are not officers or employees of the Federal Government shall serve without compensation.

(2) FEDERAL EMPLOYEES.—Members of the review panel who are officers or employees of the Federal Government shall serve without compensation in addition to that received for their services as officers or employees of the Federal Government.

(h) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to a review panel without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(i) CONSULTATION WITH OTHER ENTITIES.—In carrying out this subtitle, the chairperson shall consult and coordinate, to the maximum extent practicable, the activities of the review panel with each office of the agency that is responsible for the provision of data or technical advice concerning a significant rule.

SEC. 204. REPORT.

(a) IN GENERAL.—Except as provided in subsection (b), the chairperson shall, in accordance with section 202(d)(2), submit to the appropriate employees of the agency who would be responsible for carrying out the subject significant rule and to the appropriate committees of the Senate and the House of Representatives a report, which shall include—

(1) the findings and recommendations of the review panel with respect to the significant rule, including both the majority and minority views of the review panel members, regardless of the consensus of opinions that may derive from the meetings of the review panel; and

(2) recommendations regarding whether a survey with respect to the subject significant rule should be conducted under section 207, and—

(A) if so—

(i) a timeframe during which the survey should be conducted, taking into account the time required to implement the rule and to gather appropriate data; and

(ii) any recommendations of the review panel regarding the contents of the survey; and

(B) if not, the reasons why the survey is not recommended.

(b) FAILURE TO SUBMIT REPORT.—If the chairperson fails to submit a report under subsection (a), not later than the date on which the final rule is issued, the chairperson shall—

(1) prepare a written record of such failure detailing the reasons therefore; and

(2) submit a copy of such written record to the head of the agency and to the appropriate committees of the Congress.

SEC. 205. APPLICABILITY OF OTHER LAW; JUDICIAL REVIEW.

(a) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act do not apply to any review panel established in accordance with this subtitle.

(b) PROHIBITION ON JUDICIAL REVIEW.—No action or inaction of a review panel, including any recommendations or advice of a review panel or any procedure or process of a review panel, may be subject to judicial review by a court of the United States under chapter 7 of title 5, United States Code, or any other provision of law.

SEC. 206. MORATORIUM ON CERTAIN PUBLICATIONS.

Notwithstanding any other provision of this subtitle, no agency shall make any publication described in clause (i) or (ii) of section 202(c)(1)(A) until the initial chairperson appointed under section 202 has had an adequate opportunity to review the subject proposed rule in accordance with section 202(c)(1)(A).

SEC. 207. PEER REVIEW SURVEY.

(a) IN GENERAL.—If a review panel makes a recommendation in any report submitted under section 204(a) that a survey should be conducted with respect to a significant rule, the agency shall contract with a private sector auditing firm or other survey-related organization to conduct a survey of a cross-section of the small businesses impacted by the rule.

(b) CONTENTS OF SURVEY.—Each survey conducted under this section shall address the impact of the significant rule on small businesses, including—

(1) the applicability of the rule to various small businesses;

(2) the degree to which the rule is easy to read and comprehend;

(3) the costs to implement the rule;

(4) any recordkeeping requirements imposed by the rule; and

(5) any other technical or general issues related to the rule.

(c) AVAILABILITY OF SURVEY RESULTS.—The results of each survey conducted under this section shall be made available—

(1) to each interested Federal agency; and

(2) upon request, to any other interested party, including organizations, individuals, State and local governments, and the Congress.

Subtitle B—Regulatory Ombudsmen

SEC. 211. SMALL BUSINESS AND AGRICULTURE OMBUDSMEN.

The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by redesignating section 30 as section 31; and

(2) by inserting after section 29 the following new section:

"SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.

''(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(1) BOARD.—The term 'Board' means a Small Business Regulatory Fairness Board established under subsection (c).

''(2) COVERED AGENCY.—The term 'covered agency' means any agency that, as of the date of enactment of the Comprehensive Regulatory Reform Act of 1995, has promulgated any rule for which a regulatory flexibility analysis was required under section 605 of title 5, United States Code, and any other agency that promulgates any such rule, as of the date of such promulgation.

''(3) OMBUDSMAN.—The term 'ombudsman' means a Regional Small Business and Agriculture Ombudsman designated under subsection (b).

''(4) REGION.—The term 'region' means any area for which the Administrator has established a regional office of the Administration pursuant to section 4(a).

''(5) RULE.—The term 'rule' has the same meaning as in section 601(2) of title 5, United States Code.

''(b) OMBUDSMAN.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Comprehensive Regulatory Reform Act of 1995, the Administrator shall designate in each region a senior employee of the Administration to serve as the Regional Small Business and Agriculture Ombudsman in accordance with this subsection.

''(2) DUTIES.—Each ombudsman designated under paragraph (1) shall—

''(A) on a confidential basis, solicit and receive comments from small business concerns regarding the enforcement activities of covered agencies;

''(B) based on comments received under subparagraph (A), annually assign and publish a small business responsiveness rating to each covered agency;

''(C) publish periodic reports compiling the comments received under subparagraph (A);

''(D) coordinate the activities of the Small Business Regulatory Fairness Board established under subsection (c); and

''(E) establish a toll-free telephone number to receive comments from small business concerns under subparagraph (A).''.

SEC. 212. SMALL BUSINESS REGULATORY FAIRNESS BOARDS.

Section 30 of the Small Business Act (as added by section 211 of this Act) is amended by adding at the end the following new subsection:

''(c) SMALL BUSINESS REGULATORY FAIRNESS BOARDS.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Comprehensive Regulatory Reform Act of 1995, the Administrator shall establish in each region a Small Business Regulatory Fairness Board in accordance with this subsection.

''(2) DUTIES.—Each Board established under paragraph (1) shall—

''(A) advise the ombudsman on matters of concern to small business concerns relating to the enforcement activities of covered agencies;

''(B) conduct investigations into enforcement activities by covered agencies with respect to small business concerns;

''(C) issue advisory findings and recommendations regarding the enforcement activities of covered agencies with respect to small business concerns;

''(D) review and approve, prior to publication—

''(i) each small business responsiveness rating assigned under subsection (b)(2)(B); and

''(ii) each periodic report prepared under subsection (b)(2)(C); and

''(E) prepare written opinions regarding the reasonableness and understandability of rules issued by covered agencies.

''(3) MEMBERSHIP.—Each Board shall consist of—

''(A) 1 member appointed by the President;

''(B) 1 member appointed by the Speaker of the House of Representatives;

''(C) 1 member appointed by the Minority Leader of the House of Representatives;

''(D) 1 member appointed by the Majority Leader of the Senate; and

''(E) 1 member appointed by the Minority Leader of the Senate.

''(4) PERIOD OF APPOINTMENT; VACANCIES.—

''(A) PERIOD OF APPOINTMENT.—

''(i) PRESIDENTIAL APPOINTEES.—Each member of the Board appointed under subparagraph (A) of paragraph (2) shall be appointed for a term of 3 years, except that the initial member appointed under such subparagraph shall be appointed for a term of 1 year.

''(ii) HOUSE OF REPRESENTATIVES APPOINTEES.—Each member of the Board appointed under subparagraph (B) or (C) of paragraph (2) shall be appointed for a term of 3 years, except that the initial members appointed under such subparagraphs shall each be appointed for a term of 2 years.

''(iii) SENATE APPOINTEES.—Each member of the Board appointed under subparagraph (D) or (E) of paragraph (2) shall be appointed for a term of 3 years.

''(B) VACANCIES.—Any vacancy on the Board—

''(i) shall not affect the powers of the Board; and

''(ii) shall be filled in the same manner and under the same terms and conditions as the original appointment.

''(5) CHAIRPERSON.—The Board shall select a Chairperson from among the members of the Board.

''(6) MEETINGS.—

''(A) IN GENERAL.—The Board shall meet at the call of the Chairperson.

''(B) INITIAL MEETING.—Not later than 90 days after the date on which all members of the Board have been appointed, the Board shall hold its first meeting.

''(7) QUORUM.—A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

''(8) POWERS OF THE BOARD.—

''(A) HEARINGS.—The Board or, at its direction, any subcommittee or member of the Board, may, for the purpose of carrying out the provisions of this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Board determines to be appropriate.

''(B) WITNESS ALLOWANCES AND FEES.—Section 1821 of title 28, United States Code, shall apply to witnesses requested to appear at any hearing of the Board. The per diem and mileage allowances for any witness shall be paid from funds available to pay the expenses of the Board.

''(C) INFORMATION FROM FEDERAL AGENCIES.—Upon the request of the Chairperson, the Board may secure directly from the head of any Federal department or agency such information as the Board considers necessary to carry out this section.

''(D) POSTAL SERVICES.—The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

''(E) DONATIONS.—The Board may accept, use, and dispose of donations of services or property.

''(9) BOARD PERSONNEL MATTERS.—

''(A) COMPENSATION.—Members of the Board shall serve without compensation.

''(B) TRAVEL EXPENSES.—Members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.''.

SEC. 213. JUDICIAL REVIEW.

(a) PROHIBITION.—No action or inaction of a Regional Small Business and Agriculture Ombudsman or a Small Business Regulatory Fairness Board, including any recommendations or advice of a Regional Small Business and Agriculture Ombudsman or a Small Business Regulatory Fairness Board or any procedure or process of a Regional Small Business and Agriculture Ombudsman or a Small Business Regulatory Fairness Board, may be subject to judicial review by a court of the United States under chapter 7 of title 5, United States Code, or any other provision of law.

(b) DEFINITIONS.—For purposes of this section—

(1) the term ''Regional Small Business and Agriculture Ombudsman'' means any ombudsman designated under section 30(b) of the Small Business Act, as added by section 211 of this Act.

(2) the term ''Small Business Regulatory Fairness Board'' means any board established under section 30(c) of the Small Business Act, as added by section 212 of this Act.

BAUCUS (AND OTHERS) AMENDMENT NO. 1510

(Ordered to lie on the table.)

Mr. BAUCUS (for himself, Mr. JOHNSTON, Mr. LAUTENBERG, Mr. BRADLEY, Mrs. MURRAY, Mrs. FEINSTEIN, Mr. REID, Mrs. BOXER, Mr. MOYNIHAN, and Mr. GLENN) submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

Beginning on page 42, strike line 3 and all that follows through page 44, line 14, and insert the following:

''§ 628. Petition for alternative method of compliance

HATFIELD AMENDMENTS NOS. 1511–1512

(Ordered to lie on the table.)

Mr. HATFIELD submitted two amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1511

At the end of the substitute amendment add the following new section:

SEC. ___. LOCAL EMPOWERMENT AND FLEXIBILITY.

(a) FINDINGS.—The Congress finds that—

(1) historically, Federal programs have addressed the Nation's problems by providing categorical financial assistance with detailed requirements relating to the use of funds;

(2) while the assistance described in paragraph (1) has been directed at critical problems, some program requirements may inadvertently impede the effective delivery of services;

(3) the Nation's local governments and private, nonprofit organizations are dealing with increasingly complex problems which require the delivery of many kinds of services;

(4) the Nation's communities are diverse, and different needs are present in different communities;

(5) it is more important than ever to provide programs that—

(A) promote more effective and efficient local delivery of services to meet the full range of needs of individuals, families, and society;

(B) respond flexibly to the diverse needs of the Nation's communities;

(C) reduce the barriers between programs that impede local governments' ability to effectively deliver services; and

(D) empower local governments and private, nonprofit organizations to be innovative in creating programs that meet the unique needs of their communities while continuing to address national policy goals; and

(6) many communities have innovative planning and community involvement strategies for providing services, but Federal, State, tribal governments, and local regulations often hamper full implementation of local plans.

(b) PURPOSES.—The purposes of this section are to—

(1) enable more efficient use of Federal, State, and local resources;

(2) place less emphasis in Federal service programs on measuring resources and procedures and more emphasis on achieving Federal, State, and local policy goals;

(3) enable local governments and private, nonprofit organizations to adapt programs of Federal financial assistance to the particular needs of their communities, by—

(A) drawing upon appropriations available from more than one Federal program; and

(B) integrating programs and program funds across existing Federal financial assistance categories; and

(4) enable local governments and private, nonprofit organizations to work together and build stronger cooperative partnerships to address critical service problems.

(c) DEFINITIONS.—For purposes of this section—

(1) the term ''approved local flexibility plan'' means a local flexibility plan that combines funds from Federal, State, local government or private sources to address the service needs of a community (or any part of such a plan) that is approved by the Flexibility Council under subsection (d);

(2) the term ''community advisory committee'' means such a committee established by a local government under subsection (h);

(3) the term ''Flexibility Council'' means the council composed of the—

(A) Assistant to the President for Domestic Policy;

(B) Assistant to the President for Economic Policy;

(C) Secretary of the Treasury;

(D) Attorney General;

(E) Secretary of the Interior;

(F) Secretary of Agriculture;

(G) Secretary of Commerce;

(H) Secretary of Labor;

(I) Secretary of Health and Human Services;

(J) Secretary of Housing and Urban Development;

(K) Secretary of Transportation;

(L) Secretary of Education;

(M) Secretary of Energy;

(N) Secretary of Veterans Affairs;

(O) Secretary of Defense;

(P) Director of Federal Emergency Management Agency;

(Q) Administrator of the Environmental Protection Agency;

(R) Director of National Drug Control Policy;

(S) Administrator of the Small Business Administration;

(T) Director of the Office of Management and Budget; and

(U) Chair of the Council of Economic Advisers.

(4) the term ''covered Federal financial assistance program'' means an eligible Federal financial assistance program that is included in a local flexibility plan of a local government;

(5) the term ''eligible Federal financial assistance program''—

(A) means a Federal program under which financial assistance is available, directly or indirectly, to a local government or a qualified organization to carry out the specified program; and

(B) does not include a Federal program under which financial assistance is provided by the Federal Government directly to a beneficiary of that financial assistance or to a State as a direct payment to an individual;

(6) the term ''eligible local government'' means a local government that is eligible to receive financial assistance under 1 or more covered Federal programs;

(7) the term ''local flexibility plan'' means a comprehensive plan for the integration and administration by a local government of financial assistance provided by the Federal Government under 2 or more eligible Federal financial assistance programs;

(8) the term ''local government'' means a subdivision of a State that is a unit of general local government (as defined under section 6501 of title 31, United States Code);

(9) the term ''priority funding'' means giving higher priority (including by the assignment of extra points, if applicable) to applications for Federal financial assistance submitted by a local government having an approved local flexibility program, by—

(A) a person located in the jurisdiction of such a government; or

(B) a qualified organization eligible for assistance under a covered Federal financial assistance program included in such a plan;

(10) the term ''qualified organization'' means a private, nonprofit organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986; and

(11) the term ''State'' means the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Virgin Islands, and any tribal government.

(d) PROVISION OF FEDERAL FINANCIAL ASSISTANCE IN ACCORDANCE WITH APPROVED LOCAL FLEXIBILITY PLAN.—

(1) PAYMENTS TO LOCAL GOVERNMENTS.—Notwithstanding any other provision of law, amounts available to a local government or a qualified organization under a covered Federal financial assistance program included in an approved local flexibility plan shall be provided to and used by the local government or organization in accordance with the approved local flexibility plan.

(2) ELIGIBILITY FOR BENEFITS.—An individual or family that is eligible for benefits or services under a covered Federal financial assistance program included in an approved local flexibility plan may receive those benefits only in accordance with the approved local flexibility plan.

(e) APPLICATION FOR APPROVAL OF LOCAL FLEXIBILITY PLAN.—

(1) IN GENERAL.—A local government may submit to the Flexibility Council in accordance with this subsection an application for approval of a local flexibility plan.

(2) CONTENTS OF APPLICATION.—An application submitted under this subsection shall include—

(A)(i) a proposed local flexibility plan that complies with paragraph (3); or

(ii) a strategic plan submitted in application for designation as an enterprise community or an empowerment zone under section 1391 of the Internal Revenue Code of 1986;

(B) certification by the chief executive of the local government, and such additional assurances as may be required by the Flexibility Council, that—

(i) the local government has the ability and authority to implement the proposed plan, directly or through contractual or other arrangements, throughout the geographic area in which the proposed plan is intended to apply; and

(ii) amounts are available from non-Federal sources to pay the non-Federal share of all covered Federal financial assistance programs included in the proposed plan; and

(C) any comments on the proposed plan submitted under paragraph (4) by the Governor of the State in which the local government is located;

(D) public comments on the plan including the transcript of at least 1 public hearing and comments of the appropriate community advisory committee established under subsection (h); and

(E) other relevant information the Flexibility Council may require to approve the proposed plan.

(3) CONTENTS OF PLAN.—A local flexibility plan submitted by a local government under this subsection shall include—

(A) the geographic area to which the plan applies and the rationale for defining the area;

(B) the particular groups of individuals, by service needs, economic circumstances, or other defining factors, who shall receive services and benefits under the plan;

(C)(i) specific goals and measurable performance criteria, a description of how the plan is expected to attain those goals and criteria;

(ii) a description of how performance shall be measured; and

(iii) a system for the comprehensive evaluation of the impact of the plan on participants, the community, and program costs;

(D) the eligible Federal financial assistance programs to be included in the plan as covered Federal financial assistance programs and the specific benefits that shall be provided under the plan under such programs, including—

(i) criteria for determining eligibility for benefits under the plan;

(ii) the services available;

(iii) the amounts and form (such as cash, in-kind contributions, or financial instruments) of nonservice benefits; and

(iv) any other descriptive information the Flexibility Council considers necessary to approve the plan;

(E) except for the requirements under subsection (g)(2)(C), any Federal statutory or regulatory requirement applicable under a covered Federal financial assistance program included in the plan, the waiver of which is necessary to implement the plan;

(F) fiscal control and related accountability procedures applicable under the plan;

(G) a description of the sources of all non-Federal funds that are required to carry out covered Federal financial assistance programs included in the plan;

(H) written consent from each qualified organization for which consent is required under paragraph (2)(B); and

(I) other relevant information the Flexibility Council may require to approve the plan.

(4) PROCEDURE FOR APPLYING.—(A) To apply for approval of a local flexibility plan, a local government shall submit an application in accordance with this subsection to the Governor of the State in which the local government is located.

(B) A Governor who receives an application from a local government under subparagraph (A) may, by no later than 30 days after the date of that receipt—

(i) prepare comments on the proposed local flexibility plan included in the application;

(ii) describe any State laws which are necessary to waive for successful implementation of a local plan; and

(iii) submit the application and comments to the Flexibility Council.

(C) If a Governor fails to act within 30 days after receiving an application under subparagraph (B), the applicable local government may submit the application to the Flexibility Council.

(f) REVIEW AND APPROVAL OF LOCAL FLEXIBILITY PLANS.—

(1) REVIEW OF APPLICATIONS.—Upon receipt of an application for approval of a local flexibility plan under this section, the Flexibility Council shall—

(A) approve or disapprove all or part of the plan within 45 days after receipt of the application;

(B) notify the applicant in writing of that approval or disapproval by not later than 15 days after the date of that approval or disapproval; and

(C) in the case of any disapproval of a plan, include a written justification of the reasons for disapproval in the notice of disapproval sent to the applicant.

(2) APPROVAL.—(A) The Flexibility Council may approve a local flexibility plan for which an application is submitted under this section, or any part of such a plan, if a majority of members of the Council determines that—

(i) the plan or part shall improve the effectiveness and efficiency of providing benefits

under covered Federal programs included in the plan by reducing administrative inflexibility, duplication, and unnecessary expenditures;

(ii) the applicant local government has adequately considered, and the plan or part of the plan appropriately addresses, any effect that administration of each covered Federal program under the plan or part of the plan shall have on administration of the other covered Federal programs under that plan or part of the plan;

(iii) the applicant local government has or is developing data bases, planning, and evaluation processes that are adequate for implementing the plan or part of the plan;

(iv) the plan shall more effectively achieve Federal financial assistance goals at the local level and shall better meet the needs of local citizens;

(v) implementation of the plan or part of the plan shall adequately achieve the purposes of this section and of each covered Federal financial assistance program under the plan or part of the plan;

(vi) the plan and the application for approval of the plan comply with the requirements of this section;

(vii) the plan or part of the plan is adequate to ensure that individuals and families that receive benefits under covered Federal financial assistance programs included in the plan or part shall continue to receive benefits that meet the needs intended to be met under the program; and

(viii) the local government has—

(I) waived the corresponding local laws necessary for implementation of the plan; and

(II) sought any necessary waivers from the State.

(B) The Flexibility Council may not approve any part of a local flexibility plan if—

(i) implementation of that part would result in any increase in the total amount of obligations or outlays of discretionary appropriations or direct spending under covered Federal financial assistance programs included in that part, over the amounts of such obligations and outlays that would occur under those programs without implementation of the part; or

(ii) in the case of a plan or part that applies to assistance to a qualified organization under an eligible Federal financial assistance program, the qualified organization does not consent in writing to the receipt of that assistance in accordance with the plan.

(C) The Flexibility Council shall disapprove a part of a local flexibility plan if a majority of the Council disapproves that part of the plan based on a failure of the part to comply with subparagraph (A).

(D) In approving any part of a local flexibility plan, the Flexibility Council shall specify the period during which the part is effective.

(E) Disapproval by the Flexibility Council of any part of a local flexibility plan submitted by a local government under this title shall not affect the eligibility of a local government, a qualified organization, or any individual for benefits under any Federal program.

(3) MEMORANDA OF UNDERSTANDING.—(A) The Flexibility Council may not approve a part of a local flexibility plan unless each local government and each qualified organization that would receive financial assistance under the plan enters into a memorandum of understanding under this paragraph with the Flexibility Council.

(B) A memorandum of understanding under this subsection shall specify all understandings that have been reached by the Flexibility Council, the local government, and each qualified organization that is subject to a local flexibility plan, regarding the approval and implementation of all parts of a local flexibility plan that are the subject of the memorandum, including understandings with respect to—

(i) all requirements under covered Federal financial assistance programs that are to be waived by the Flexibility Council under subsection (g)(2);

(ii)(I) the total amount of Federal funds that shall be provided as benefits under or used to administer covered Federal financial assistance programs included in those parts; or

(II) a mechanism for determining that amount, including specification of the total amount of Federal funds that shall be provided or used under each covered Federal financial assistance program included in those parts;

(iii) the sources of all non-Federal funds that shall be provided as benefits under or used to administer those parts;

(iv) measurable performance criteria that shall be used during the term of those parts to determine the extent to which the goals and performance levels of the parts are achieved; and

(v) the data to be collected to make that determination.

(4) LIMITATION ON CONFIDENTIALITY REQUIREMENTS.—The Flexibility Council may not, as a condition of approval of any part of a local flexibility plan or with respect to the implementation of any part of an approved local flexibility plan, establish any confidentiality requirement that would—

(A) impede the exchange of information needed for the design or provision of benefits under the parts; or

(B) conflict with law.

(g) IMPLEMENTATION OF APPROVED LOCAL FLEXIBILITY PLANS; WAIVER OF REQUIREMENTS.—

(1) PAYMENTS AND ADMINISTRATION IN ACCORDANCE WITH PLAN.—Notwithstanding any other law, any benefit that is provided under a covered Federal financial assistance program included in an approved local flexibility plan shall be paid and administered in the manner specified in the approved local flexibility plan.

(2) WAIVER OF REQUIREMENTS.—(A) Notwithstanding any other law and subject to subparagraphs (B) and (C), the Flexibility Council may waive any requirement applicable under Federal law to the administration of, or provision of benefits under, any covered Federal assistance program included in an approved local flexibility plan, if that waiver is—

(i) reasonably necessary for the implementation of the plan; and

(ii) approved by a majority of members of the Flexibility Council.

(B) The Flexibility Council may not waive a requirement under this paragraph unless the Council finds that waiver of the requirement shall not result in a qualitative reduction in services or benefits for any individual or family that is eligible for benefits under a covered Federal financial assistance program.

(C) The Flexibility Council may not waive any requirement under this paragraph—

(i) that enforces any constitutional or statutory right of an individual, including any right under—

(I) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);

(II) section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.);

(III) title IX of the Education Amendments of 1972 (86 Stat. 373 et seq.);

(IV) the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); or

(V) the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);

(ii) for payment of a non-Federal share of funding of an activity under a covered Federal financial assistance program; or

(iii) for grants received on a maintenance of effort basis.

(3) SPECIAL ASSISTANCE.—To the extent permitted by law, the head of each Federal agency shall seek to provide special assistance to a local government or qualified organization to support implementation of an approved local flexibility plan, including expedited processing, priority funding, and technical assistance.

(4) EVALUATION AND TERMINATION.—(A) A local government, in accordance with regulations issued by the Flexibility Council, shall—

(i) submit such reports on and cooperate in such audits of the implementation of its approved local flexibility plan; and

(ii) periodically evaluate the effect implementation of the plan has had on—

(I) individuals who receive benefits under the plan;

(II) communities in which those individuals live; and

(III) costs of administering covered Federal financial assistance programs included in the plan.

(B) No later than 90 days after the end of the 1-year period beginning on the date of the approval by the Flexibility Council of an approved local flexibility plan of a local government, and annually thereafter, the local government shall submit to the Flexibility Council a report on the principal activities and achievements under the plan during the period covered by the report, comparing those achievements to the goals and performance criteria included in the plan under subsection (e)(3)(C).

(C)(i) The Flexibility Council may terminate the effectiveness of an approved local flexibility plan, if the Flexibility Council, after consultation with the head of each Federal agency responsible for administering a covered Federal financial assistance program included in such, determines—

(I) that the goals and performance criteria included in the plan under subsection (e)(3)(C) have not been met; and

(II) after considering any experiences gained in implementation of the plan, that those goals and criteria are sound.

(ii) In terminating the effectiveness of an approved local flexibility plan under this subparagraph, the Flexibility Council shall allow a reasonable period of time for appropriate Federal, State, and local agencies and qualified organizations to resume administration of Federal programs that are covered Federal financial assistance programs included in the plan.

(5) FINAL REPORT; EXTENSION OF PLANS.—(A) No later than 45 days after the end of the effective period of an approved local flexibility plan of a local government, or at any time that the local government determines that the plan has demonstrated its worth, the local government shall submit to the Flexibility Council a final report on its implementation of the plan, including a full evaluation of the successes and shortcomings of the plan and the effects of that implementation on individuals who receive benefits under those programs.

(B) The Flexibility Council may extend the effective period of an approved local flexibility plan for such period as may be appropriate, based on the report of a local government under subparagraph (A).

(h) COMMUNITY ADVISORY COMMITTEES.—

(1) ESTABLISHMENT.—A local government that applies for approval of a local flexibility plan under this section shall establish a community advisory committee in accordance with this section.

(2) FUNCTIONS.—A community advisory committee shall advise a local government in the development and implementation of its local flexibility plan, including advice with respect to—

(A) conducting public hearings; and

(B) reviewing and commenting on all community policies, programs, and actions under the plan which affect low income individuals and families, with the purpose of ensuring maximum coordination and responsiveness of the plan in providing benefits under the plan to those individuals and families.

(3) MEMBERSHIP.—The membership of a community advisory committee shall—

(A) be comprised of—

(i) persons with leadership experience in the private and voluntary sectors;

(ii) local elected officials;

(iii) representatives of participating qualified organizations; and

(iv) the general public; and

(B) include individuals and representatives of community organizations who shall help to enhance the leadership role of the local government in developing a local flexibility plan.

(4) OPPORTUNITY FOR REVIEW AND COMMENT BY COMMITTEE.—Before submitting an application for approval of a final proposed local flexibility plan, a local government shall submit the final proposed plan for review and comment by a community advisory committee established by the local government.

(5) COMMITTEE REVIEW OF REPORTS.—Before submitting annual or final reports on an approved Federal assistance plan, a local government or private nonprofit organization shall submit the report for review and comment to the community advisory committee.

(i) TECHNICAL AND OTHER ASSISTANCE.—

(1) TECHNICAL ASSISTANCE.—(A) The Flexibility Council may provide, or direct that the head of a Federal agency provide, technical assistance to a local government or qualified organization in developing information necessary for the design or implementation of a local flexibility plan.

(B) Assistance may be provided under this paragraph if a local government makes a request that includes, in accordance with requirements established by the Flexibility Council—

(i) a description of the local flexibility plan the local government proposes to develop;

(ii) a description of the groups of individuals to whom benefits shall be provided under covered Federal assistance programs included in the plan; and

(iii) such assurances as the Flexibility Council may require that—

(I) in the development of the application to be submitted under this title for approval of the plan, the local government shall provide adequate opportunities to participate to—

(aa) individuals and families that shall receive benefits under covered Federal financial assistance programs included in the plan; and

(bb) governmental agencies that administer those programs; and

(II) the plan shall be developed after considering fully—

(aa) needs expressed by those individuals and families;

(bb) community priorities; and

(cc) available governmental resources in the geographic area to which the plan shall apply.

(2) DETAILS TO COUNCIL.—At the request of the Flexibility Council and with the approval of an agency head who is a member of the Council, agency staff may be detailed to the Flexibility Council on a nonreimbursable basis.

(j) FLEXIBILITY COUNCIL.—

(1) FUNCTIONS.—The Flexibility Council shall—

(A) receive, review, and approve or disapprove local flexibility plans for which approval is sought under this section;

(B) upon request from an applicant for such approval, direct the head of an agency that administers a covered Federal financial assistance program under which substantial Federal financial assistance would be provided under the plan to provide technical assistance to the applicant;

(C) monitor the progress of development and implementation of local flexibility plans;

(D) perform such other functions as are assigned to the Flexibility Council by this section; and

(E) issue regulations to implement this section within 180 days after the date of its enactment.

(2) REPORTS.—No less than 18 months after the date of the enactment of this Act, and annually thereafter, the Flexibility Council shall submit a report on the 5 Federal regulations that are most frequently waived by the Flexibility Council for local governments with approved local flexibility plans to the President and the Congress. The President shall review the report and determine whether to amend or terminate such Federal regulations.

(k) REPORT.—No later than 54 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Congress, a report that—

(1) describes the extent to which local governments have established and implemented approved local flexibility plans;

(2) evaluates the effectiveness of covered Federal assistance programs included in approved local flexibility plans; and

(3) includes recommendations with respect to local flexibility.

AMENDMENT NO. 1512

Add at the end of the substitute amendment the following new section:

SEC. ___. LOCAL EMPOWERMENT AND FLEXIBILITY.

(a) FINDINGS.—The Congress finds that—

(1) historically, Federal social service programs have addressed the Nation's social problems by providing categorical assistance with detailed requirements relating to the use of funds;

(2) while the assistance described in paragraph (1) has been directed at critical problems, some program requirements may inadvertently impede the effective delivery of social services;

(3) the Nation's local governments and private, nonprofit organizations are dealing with increasingly complex social problems which require the delivery of many kinds of social services;

(4) the Nation's communities are diverse, and different social needs are present in different communities;

(5) it is more important than ever to provide programs that—

(A) promote local delivery of social services to meet the full range of needs of individuals and families;

(B) respond flexibly to the diverse needs of the Nation's communities;

(C) reduce the barriers between programs that impede local governments' ability to effectively deliver social services; and

(D) empower local governments and private, nonprofit organizations to be innovative in creating programs that meet the unique needs of the people in their communities while continuing to address national social service goals; and

(6) many communities have innovative planning and community involvement strategies for social services, but Federal, State, and local regulations often hamper full implementation of local plans.

(b) PURPOSES.—The purposes of this section are to—

(1) enable more efficient use of Federal, State, and local resources;

(2) place less emphasis in Federal social service programs on measuring resources and procedures and more emphasis on achieving Federal, State, and local social services goals;

(3) enable local governments and private, nonprofit organizations to adapt programs of Federal assistance to the particular needs of low income citizens and the operating practices of recipients, by—

(A) drawing upon appropriations available from more than one Federal program; and

(B) integrating programs and program funds across existing Federal assistance categories; and

(4) enable local governments and private, nonprofit organizations to work together and build stronger cooperative partnerships to address critical social service problems.

(c) DEFINITIONS.—For purposes of this Act—

(1) the term ''approved local flexibility plan'' means a local flexibility plan that combines funds from Federal, State, local government, tribal government or private sources to address the social service needs of a community (or any part of such a plan) that is approved by the Community Enterprise Board under subsection (e);

(2) the term ''community advisory committee'' means such a committee established by a local government under subsection (g);

(3) the term ''Community Enterprise Board'' means the board established by the President that is composed of the—

(A) Vice President;

(B) Assistant to the President for Domestic Policy;

(C) Assistant to the President for Economic Policy;

(D) Secretary of the Treasury;

(E) Attorney General;

(F) Secretary of the Interior;

(G) Secretary of Agriculture;

(H) Secretary of Commerce;

(I) Secretary of Labor;

(J) Secretary of Health and Human Services;

(K) Secretary of Housing and Urban Development;

(L) Secretary of Transportation;

(M) Secretary of Education;

(N) Administrator of the Environmental Protection Agency;

(O) Director of National Drug Control Policy;

(P) Administrator of the Small Business Administration;

(Q) Director of the Office of Management and Budget; and

(R) Chair of the Council of Economic Advisers.

(4) the term ''covered Federal assistance program'' means an eligible Federal assistance program that is included in a local flexibility plan of a local government;

(5) the term ''eligible Federal assistance program''—

(A) means a Federal program under which assistance is available, directly or indirectly, to a local government or a qualified organization to carry out a program for—

(i) economic development;

(ii) employment training;

(iii) health;

(iv) housing;

(v) nutrition;

(vi) other social services; or

(vii) rural development; and

(B) does not include a Federal program under which assistance is provided by the Federal Government directly to a beneficiary of that assistance or to a State as a direct payment to an individual;

(6) the term ''eligible local government'' means a local government that is eligible to receive assistance under 1 or more covered Federal programs;

(7) the term ''local flexibility plan'' means a comprehensive plan for the integration and administration by a local government of assistance provided by the Federal Government under 2 or more eligible Federal assistance programs;

(8) the term ''local government'' means a subdivision of a State that is a unit of general local government (as defined under section 6501 of title 31, United States Code);

(9) the term ''low income'' means having an income that is not greater than 200 percent of the Federal poverty income level;

(10) the term ''priority funding'' means giving higher priority (including by the assignment of extra points, if applicable) to applications for Federal assistance submitted by a local government having an approved local flexibility program, by—

(A) a person located in the jurisdiction of such a government; or

(B) a qualified organization eligible for assistance under a covered Federal assistance program included in such a plan;

(11) the term ''qualified organization'' means a private, nonprofit organization described in section 501(c)(3) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1986; and

(12) the term ''State'' means the 50 States, the District of Columbia, Puerto Rico, American Samoa, Guam, the Virgin Islands, and any Indian tribal government.

(d) DEMONSTRATION PROGRAM.—The Community Enterprise Board shall—

(1) establish and administer a local flexibility demonstration program by approving local flexibility plans in accordance with the provisions of this section;

(2) no later than 180 days after the date of the enactment of this Act, select no more than 30 local governments from no more than 6 States to participate in such program, of which—

(A) 3 States shall each have a population of 3,500,000 or more as determined under the most recent decennial census; and

(B) 3 States shall each have a population of 3,500,000 or less as determined under the most recent decennial census.

(e) PROVISION OF FEDERAL ASSISTANCE IN ACCORDANCE WITH APPROVED LOCAL FLEXIBILITY PLAN.—

(1) PAYMENTS TO LOCAL GOVERNMENTS.—Notwithstanding any other provision of law, amounts available to a local government or a qualified organization under a covered Federal assistance program included in an approved local flexibility plan shall be provided to and used by the local government or organization in accordance with the approved local flexibility plan.

(2) ELIGIBILITY FOR BENEFITS.—An individual or family that is eligible for benefits or services under a covered Federal assistance program included in an approved local flexibility plan may receive those benefits only in accordance with the approved local flexibility plan.

(f) APPLICATION FOR APPROVAL OF LOCAL FLEXIBILITY PLAN.—

(1) IN GENERAL.—A local government may submit to the Community Enterprise Board in accordance with this subsection an application for approval of a local flexibility plan.

(2) CONTENTS OF APPLICATION.—An application submitted under this subsection shall include—

(A) a proposed local flexibility plan that complies with paragraph (3);

(B) certification by the chief executive of the local government, and such additional assurances as may be required by the Community Enterprise Board, that—

(i) the local government has the ability and authority to implement the proposed plan, directly or through contractual or other arrangements, throughout the geographic area in which the proposed plan is intended to apply;

(ii) amounts are available from non-Federal sources to pay the non-Federal share of all covered Federal assistance programs included in the proposed plan; and

(iii) low income individuals and families that reside in that geographic area participated in the development of the proposed plan;

(C) any comments on the proposed plan submitted under paragraph (4) by the Governor of the State in which the local government is located;

(D) public comments on the plan including the transcript of at least 1 public hearing and comments of the appropriate community advisory committee established under subsection (i); and

(E) other relevant information the Community Enterprise Board may require to approve the proposed plan.

(3) CONTENTS OF PLAN.—A local flexibility plan submitted by a local government under this subsection shall include—

(A) the geographic area to which the plan applies and the rationale for defining the area;

(B) the particular groups of individuals, by age, service needs, economic circumstances, or other defining factors, who shall receive services and benefits under the plan;

(C)(i) specific goals and measurable performance criteria, a description of how the plan is expected to attain those goals and criteria;

(ii) a description of how performance shall be measured; and

(D) a system for the comprehensive evaluation of the impact of the plan on participants, the community, and program costs;

(E) the eligible Federal assistance programs to be included in the plan as covered Federal assistance programs and the specific benefits that shall be provided under the plan under such programs, including—

(i) criteria for determining eligibility for benefits under the plan;

(ii) the services available;

(iii) the amounts and form (such as cash, in-kind contributions, or financial instruments) of nonservice benefits; and

(iv) any other descriptive information the Community Enterprise Board considers necessary to approve the plan;

(F) except for the requirements under subsection (h)(2)(C), any Federal statutory or regulatory requirement applicable under a covered Federal assistance program included in the plan, the waiver of which is necessary to implement the plan;

(G) fiscal control and related accountability procedures applicable under the plan;

(H) a description of the sources of all non-Federal funds that are required to carry out covered Federal assistance programs included in the plan;

(I) written consent from each qualified organization for which consent is required under subsection (e)(2)(B); and

(J) other relevant information the Community Enterprise Board may require to approve the plan.

(4) PROCEDURE FOR APPLYING.—(A) To apply for approval of a local flexibility plan, a local government shall submit an application in accordance with this subsection to the Governor of the State in which the local government is located.

(B) A Governor who receives an application from a local government under subparagraph (A) may, by no later than 30 days after the date of that receipt—

(i) prepare comments on the proposed local flexibility plan included in the application;

(ii) describe any State laws which are necessary to waive for successful implementation of a local plan; and

(iii) submit the application and comments to the Community Enterprise Board.

(C) If a Governor fails to act within 30 days after receiving an application under subparagraph (B), the applicable local government may submit the application to the Community Enterprise Board.

(g) REVIEW AND APPROVAL OF LOCAL FLEXIBILITY PLANS.—

(1) REVIEW OF APPLICATIONS.—Upon receipt of an application for approval of a local flexibility plan under this section, the Community Enterprise Board shall—

(A) approve or disapprove all or part of the plan within 45 days after receipt of the application;

(B) notify the applicant in writing of that approval or disapproval by not later than 15 days after the date of that approval or disapproval; and

(C) in the case of any disapproval of a plan, include a written justification of the reasons for disapproval in the notice of disapproval sent to the applicant.

(2) APPROVAL.—(A) The Community Enterprise Board may approve a local flexibility plan for which an application is submitted under this section, or any part of such a plan, if a majority of members of the Board determines that—

(i) the plan or part shall improve the effectiveness and efficiency of providing benefits under covered Federal programs included in the plan by reducing administrative inflexibility, duplication, and unnecessary expenditures;

(ii) the applicant local government has adequately considered, and the plan or part of the plan appropriately addresses, any effect that administration of each covered Federal program under the plan or part of the plan shall have on administration of the other covered Federal programs under that plan or part of the plan;

(iii) the applicant local government has or is developing data bases, planning, and evaluation processes that are adequate for implementing the plan or part of the plan;

(iv) the plan shall more effectively achieve Federal assistance goals at the local level and shall better meet the needs of local citizens;

(v) implementation of the plan or part of the plan shall adequately achieve the purposes of this title and of each covered Federal assistance program under the plan or part of the plan;

(vi) the plan and the application for approval of the plan comply with the requirements of this section;

(vii) the plan or part of the plan is adequate to ensure that individuals and families that receive benefits under covered Federal assistance programs included in the plan or part shall continue to receive benefits that meet the needs intended to be met under the program;

(viii) the qualitative level of those benefits shall not be reduced for any individual or family; and

(ix) the local government has—

(I) waived the corresponding local laws necessary for implementation of the plan; and

(II) sought any necessary waivers from the State.

(B) The Community Enterprise Board may not approve any part of a local flexibility plan if—

(i) implementation of that part would result in any increase in the total amount of

obligations or outlays of discretionary appropriations or direct spending under covered Federal assistance programs included in that part, over the amounts of such obligations and outlays that would occur under those programs without implementation of the part; or

(ii) in the case of a plan or part that applies to assistance to a qualified organization under an eligible Federal assistance program, the qualified organization does not consent in writing to the receipt of that assistance in accordance with the plan.

(C) The Community Enterprise Board shall disapprove a part of a local flexibility plan if a majority of the Board disapproves that part of the plan based on a failure of the part to comply with subparagraph (A).

(D) In approving any part of a local flexibility plan, the Community Enterprise Board shall specify the period during which the part is effective. An approved local flexibility plan shall not be effective after the date of the termination of effectiveness of this section under subsection (*l*)(1).

(E) Disapproval by the Community Enterprise Board of any part of a local flexibility plan submitted by a local government under this section shall not affect the eligibility of a local government, a qualified organization, or any individual for benefits under any Federal program.

(3) MEMORANDA OF UNDERSTANDING.—(A) The Community Enterprise Board may not approve a part of a local flexibility plan unless each local government and each qualified organization that would receive assistance under the plan enters into a memorandum of understanding under this subsection with the Community Enterprise Board.

(B) A memorandum of understanding under this subsection shall specify all understandings that have been reached by the Community Enterprise Board, the local government, and each qualified organization that is subject to a local flexibility plan, regarding the approval and implementation of all parts of a local flexibility plan that are the subject of the memorandum, including understandings with respect to—

(i) all requirements under covered Federal assistance programs that are to be waived by the Community Enterprise Board under subsection (h)(2);

(ii)(I) the total amount of Federal funds that shall be provided as benefits under or used to administer covered Federal assistance programs included in those parts; or

(II) a mechanism for determining that amount, including specification of the total amount of Federal funds that shall be provided or used under each covered Federal assistance program included in those parts;

(iii) the sources of all non-Federal funds that shall be provided as benefits under or used to administer those parts;

(iv) measurable performance criteria that shall be used during the term of those parts to determine the extent to which the goals and performance levels of the parts are achieved; and

(v) the data to be collected to make that determination.

(4) LIMITATION ON CONFIDENTIALITY REQUIREMENTS.—The Community Enterprise Board may not, as a condition of approval of any part of a local flexibility plan or with respect to the implementation of any part of an approved local flexibility plan, establish any confidentiality requirement that would—

(A) impede the exchange of information needed for the design or provision of benefits under the parts; or

(B) conflict with law.

(h) IMPLEMENTATION OF APPROVED LOCAL FLEXIBILITY PLANS; WAIVER OF REQUIREMENTS.

(1) PAYMENTS AND ADMINISTRATION IN ACCORDANCE WITH PLAN.—Notwithstanding any other law, any benefit that is provided under a covered Federal assistance program included in an approved local flexibility plan shall be paid and administered in the manner specified in the approved local flexibility plan.

(2) WAIVER OF REQUIREMENTS.—(A) Notwithstanding any other law and subject to subparagraphs (B) and (C), the Community Enterprise Board may waive any requirement applicable under Federal law to the administration of, or provision of benefits under, any covered Federal assistance program included in an approved local flexibility plan, if that waiver is—

(i) reasonably necessary for the implementation of the plan; and

(ii) approved by a majority of members of the Community Enterprise Board.

(B) The Community Enterprise Board may not waive a requirement under this subsection unless the Board finds that waiver of the requirement shall not result in a qualitative reduction in services or benefits for any individual or family that is eligible for benefits under a covered Federal assistance program.

(C) The Community Enterprise Board may not waive any requirement under this subsection—

(i) that enforces any constitutional or statutory right of an individual, including any right under—

(I) title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);

(II) section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.);

(III) title IX of the Education Amendments of 1972 (86 Stat. 373 et seq.);

(IV) the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); or

(V) the Americans with Disabilities Act of 1990;

(ii) for payment of a non-Federal share of funding of an activity under a covered Federal assistance program; or

(iii) for grants received on a maintenance of effort basis.

(3) SPECIAL ASSISTANCE.—To the extent permitted by law, the head of each Federal agency shall seek to provide special assistance to a local government or qualified organization to support implementation of an approved local flexibility plan, including expedited processing, priority funding, and technical assistance.

(4) EVALUATION AND TERMINATION.—(A) A local government, in accordance with regulations issued by the Community Enterprise Board, shall—

(i) submit such reports on and cooperate in such audits of the implementation of its approved local flexibility plan; and

(ii) periodically evaluate the effect implementation of the plan has had on—

(I) individuals who receive benefits under the plan;

(II) communities in which those individuals live; and

(III) costs of administering covered Federal assistance programs included in the plan.

(B) No later than 90 days after the end of the 1-year period beginning on the date of the approval by the Community Enterprise Board of an approved local flexibility plan of a local government, and annually thereafter, the local government shall submit to the Community Enterprise Board a report on the principal activities and achievements under the plan during the period covered by the report, comparing those achievements to the goals and performance criteria included in the plan under subsection (f)(3)(C).

(C)(i) If the Community Enterprise Board, after consultation with the head of each Federal agency responsible for administering a covered Federal assistance program included in an approved local flexibility plan of a local government, determines—

(I) that the goals and performance criteria included in the plan under subsection (f)(3)(C) have not been met; and

(II) after considering any experiences gained in implementation of the plan, that those goals and criteria are sound;

the Community Enterprise Board may terminate the effectiveness of the plan.

(ii) In terminating the effectiveness of an approved local flexibility plan under this subparagraph, the Community Enterprise Board shall allow a reasonable period of time for appropriate Federal, State, and local agencies and qualified organizations to resume administration of Federal programs that are covered Federal assistance programs included in the plan.

(5) FINAL REPORT; EXTENSION OF PLANS.—(A) No later than 45 days after the end of the effective period of an approved local flexibility plan of a local government, or at any time that the local government determines that the plan has demonstrated its worth, the local government shall submit to the Community Enterprise Board a final report on its implementation of the plan, including a full evaluation of the successes and shortcomings of the plan and the effects of that implementation on individuals who receive benefits under those programs.

(B) The Community Enterprise Board may extend the effective period of an approved local flexibility plan for such period as may be appropriate, based on the report of a local government under subparagraph (A).

(i) COMMUNITY ADVISORY COMMITTEES.—

(1) ESTABLISHMENT.—A local government that applies for approval of a local flexibility plan under this section shall establish a community advisory committee in accordance with this subsection.

(2) FUNCTIONS.—A community advisory committee shall advise a local government in the development and implementation of its local flexibility plan, including advice with respect to—

(A) conducting public hearings;

(B) representing the interest of low income individuals and families; and

(C) reviewing and commenting on all community policies, programs, and actions under the plan which affect low income individuals and families, with the purpose of ensuring maximum coordination and responsiveness of the plan in providing benefits under the plan to those individuals and families.

(3) MEMBERSHIP.—The membership of a community advisory committee shall—

(A) be comprised of—

(i) low income individuals, who shall—

(I) comprise at least one-third of the membership; and

(II) include minority individuals who are participants or who qualify to participate in eligible Federal assistance programs;

(ii) representatives of low income individuals and families;

(iii) persons with leadership experience in the private and voluntary sectors;

(iv) local elected officials;

(v) representatives of participating qualified organizations; and

(vi) the general public; and

(B) include individuals and representatives of community organizations who shall help to enhance the leadership role of the local government in developing a local flexibility plan.

(4) OPPORTUNITY FOR REVIEW AND COMMENT BY COMMITTEE.—Before submitting an application for approval of a final proposed local flexibility plan, a local government shall submit the final proposed plan for review and comment by a community advisory committee established by the local government.

(5) COMMITTEE REVIEW OF REPORTS.—Before submitting annual or final reports on an approved assistance plan, a local government or private nonprofit organization shall submit the report for review and comment to the community advisory committee.

(j) TECHNICAL AND OTHER ASSISTANCE.—

(1) TECHNICAL ASSISTANCE.—(A) The Community Enterprise Board may provide, or direct that the head of a Federal agency provide, technical assistance to a local government or qualified organization in developing information necessary for the design or implementation of a local flexibility plan.

(B) Assistance may be provided under this subsection if a local government makes a request that includes, in accordance with requirements established by the Community Enterprise Board—

(i) a description of the local flexibility plan the local government proposes to develop;

(ii) a description of the groups of individuals to whom benefits shall be provided under covered Federal assistance programs included in the plan; and

(iii) such assurances as the Community Enterprise Board may require that—

(I) in the development of the application to be submitted under this title for approval of the plan, the local government shall provide adequate opportunities to participate to—

(aa) low income individuals and families that shall receive benefits under covered Federal assistance programs included in the plan; and

(bb) governmental agencies that administer those programs; and

(II) the plan shall be developed after considering fully—

(aa) needs expressed by those individuals and families;

(bb) community priorities; and

(cc) available governmental resources in the geographic area to which the plan shall apply.

(2) DETAILS TO BOARD.—At the request of the Chairman of the Community Enterprise Board and with the approval of an agency head who is a member of the Board, agency staff may be detailed to the Community Enterprise Board on a nonreimbursable basis.

(k) COMMUNITY ENTERPRISE BOARD.—

(1) FUNCTIONS.—The Community Enterprise Board shall—

(A) receive, review, and approve or disapprove local flexibility plans for which approval is sought under this section;

(B) upon request from an applicant for such approval, direct the head of an agency that administers a covered Federal assistance program under which substantial Federal assistance would be provided under the plan to provide technical assistance to the applicant;

(C) monitor the progress of development and implementation of local flexibility plans;

(D) perform such other functions as are assigned to the Community Enterprise Board by this section; and

(E) issue regulations to implement this section within 180 days after the date of its enactment.

(2) REPORTS.—No less than 18 months after the date of the enactment of this Act, and annually thereafter, the Community Enterprise Board shall submit a report on the 5 Federal regulations that are most frequently waived by the Community Enterprise Board for local governments with approved local flexibility plans to the President and the Congress. The President shall review the report and determine whether to amend or terminate such Federal regulations.

(*l*) TERMINATION AND REPEAL; REPORT.—

(1) TERMINATION AND REPEAL.—This section is repealed on the date that is 5 years after the date of the enactment of this Act.

(2) REPORT.—No later than 4 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Congress, a report that—

(A) describes the extent to which local governments have established and implemented approved local flexibility plans;

(B) evaluates the effectiveness of covered Federal assistance programs included in approved local flexibility plans; and

(C) includes recommendations with respect to continuing local flexibility.

BUMPERS AMENDMENT NO. 1513

(Ordered to lie on the table.)

Mr. BUMPERS submitted an amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 74, line 3 add ''independently'' immediately prior to ''decide''.

MCCAIN (AND LIEBERMAN) AMENDMENT NO. 1514

(Ordered to lie on the table.)

Mr. MCCAIN (for himself and Mr. LIEBERMAN) submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

At the end of the amendment insert the following new section:

SEC. . REPEAL OF MEDICARE AND MEDICAID COVERAGE DATA BANK.

(a) REPEAL.—

(1) IN GENERAL.—Section 13581 of the Omnibus Budget Reconciliation Act of 1993 is hereby repealed.

(2) APPLICATION OF THE SOCIAL SECURITY ACT.—The Social Security Act shall be applied and administered as if section 13581 of the Omnibus Budget Reconciliation Act of 1993 (and the amendments made by such section) had not been enacted.

(b) STUDY AND REPORT.—

(1) STUDY.—The Secretary of Health and Human Services (hereafter in this subsection referred to as the ''Secretary'') shall conduct a study on how to achieve the objectives of the data bank described in section 1144 of the Social Security Act (as in effect on the day before the date of the enactment of this Act) in the most cost-effective manner, taking into account—

(A) the administrative burden of such data bank on private sector entities and governments,

(B) the possible duplicative reporting requirements of the Health Care Financing Administration in effect on such date of enactment, and

(C) the legal ability of such entities and governments to acquire the required information.

(2) REPORTS.—The Secretary shall report to the Congress on the results of the study described in paragraph (1) by not later than 180 days after the date of the enactment of this Act.

● Mr. MCCAIN. Mr. President, this amendment would eliminate a large and unjustified administrative burden imposed on employers by an ill-considered piece of legislation passed 2 years ago. Specifically, it would repeal the Medicare and Medicaid coverage data bank, section 13581 of OBRA 1993, a law that is extremely expensive, burdensome, punitive, and in my view, entirely unnecessary.

The data bank law requires every employer who offers health care coverage to provide substantial and often difficult-to-obtain information on current and past employees and their dependents, including names, Social Security numbers, health care plans, and period of coverage. Employers that do not satisfy this considerable reporting obligation are subject to substantial penalties, possibly up to $250,000 per year or even more if the failure to report is found to be deliberate.

The purported objective of the data bank law is to ensure reimbursement of costs to Medicare or Medicaid when a third party is the primary payor. This is a legitimate objective. However, if the objective of the data bank is to preserve Medicare and Medicaid funds, why is it necessary to mandate information on all employees, the vast majority of whom have no direct association with either the Medicare or Medicaid Program?

Last year, I introduced S. 1933 to repeal the Medicare and Medicaid coverage data bank. Unfortunately, this bill did not pass in the 103d Congress, in part because of a questionable Congressional Budget Office analysis that estimated that the data bank would save the Federal Government about $1 billion. In contrast, the General Accounting Office found that ''as envisioned, the data bank would have certain inherent problems and likely achieve little or no savings to the Medicare and Medicaid programs.'' Still, due primarily to the fiction that the data bank would save money, S. 1933 was not enacted last year.

The GAO report on the data bank law also found that employers are not certain of their specific reporting obligations, because HCFA has not provided adequate guidance. Much of the information which is required is not typically collected by employers, such as Social Security numbers of dependents and certain health insurance information. Some employers have even questioned whether it is legal for them under various privacy laws to seek to obtain the required information.

The GAO report further found that employers are facing significant costs in complying with the reporting requirements, including the costs of redesigning their payroll and personnel systems. It cites one company with 44,000 employees that would have costs of approximately $52,000 and another company with 4,000 employees that would have costs of $12,000. Overall, the American Payroll Association estimated last year that this requirement will cost between $50,000 and $100,000 per company.

I would add that the reporting requirement applies only to employers that provide health insurance coverage to their employees. It is unconscionable that we are adding costs and penalties to those who have been most diligent in providing health coverage to their employees. The last thing that the Federal Government should do is impose disincentives to employee health care coverage, which is one of

the unintended consequences of the data bank law.

Perhaps the most disturbing aspect of the data bank law is that its enormous costs have little or no corresponding benefit. The GAO report concluded that ''The additional information gathering and record keeping required by the data bank appears to provide little benefit to Medicare or Medicaid in recovering mistaken payments.'' This is in part because HCFA is already obtaining this information in a much more efficient manner than that required under OBRA 1993.

For example, OBRA 1989 provides for HCFA to periodically match Medicare beneficiary data with Internal Revenue Service employment information—the Data Match Program. Also, HCFA directly asks beneficiaries about primary payor coverage. To the extent that the data bank duplicates these efforts, any potential savings will not be realized. It is clearly preferable to require HCFA to use the information it already has than to require the private sector to provide duplicative information.

The GAO report found that ''the data match not only can provide the same information [as the Data Bank] without raising the potential problems described above, but it can do so at less cost.'' It also recognized that both the data match and data bank processes rely too much on an after-the-fact recovery approach, and recommended enhancing up-front identification of other insurance and avoiding erroneous payments. In this regard, it documented that HCFA has already initiated this prospective approach.

For these and other reasons, the Labor and Human Resources Appropriations report last year contained language prohibiting the use of Federal funds for developing or maintaining the data bank. However, this provision by itself did not revoke the requirement that covered entities must still provide the required information on the health coverage of current and former employees and their families, This would have resulted in the bizarre situation in which covered employers would have had to report the information, but there would have been no data bank to process or retrieve it.

Finally, in response to the public outcry about this Federal mandate, the Health Care Financing Administration [HCFA] indicated that it will not be enforcing the data bank's reporting requirements in fiscal year 1995. It stated that in light of the refusal of Congress to fund the data bank, ''we have agreed to stay an administrative action to implement the current requirements, including the promulgation of reporting forms and instructions. Therefore, we will not expect employers to compile the necessary information or file the required reports. Likewise, no sanctions will be imposed for failure to file such reports.''

This was a major step in the right direction. However, the data bank and its reporting requirements are still in the law and are still scheduled to be implemented in the next fiscal year. Consequently, this year I have reintroduced my data bank repeal bill, S. 194. I have recently been informed that the CBO has revised its scoring to recognize that the data bank would not save the Federal Government any money. This removed the only argument in favor of the data bank and the only major impediment to its repeal.

Mr. President, the Federal Government continues to impose substantial financial burdens on the private sector without fully accepting its share of the burden to implement a program. We should once again expect the worst case scenario to occur: employers will provide the required information at substantial administrative burden, there will be no data bank in which to make use of it, and even if a data bank were funded and established, the information stored could not be used efficiently to save Medicare or Medicaid funds.

I do not want this repeal to be construed, in any way, as opposition to HCFA obtaining the information it needs to administer the Medicare and Medicaid programs efficiently, and obtaining reimbursement from third party payors when appropriate. To assure that HCFA has the information it needs, the bill also requires the Secretary of HHS to conduct a study and report to Congress on how to achieve the purported objectives of the data bank in the most cost-effective manner possible.

The Secretary's study would have to take into consideration the administrative costs and burden on the private sector and the Government of processing and providing the necessary information versus the benefits and savings that such reporting requirements would produce. It must also consider current HCFA reporting requirements and the ability of entities to obtain the required information legally and efficiently.

Too often, Congress considers only the costs savings to the Federal Government of legislation while ignoring costs to other parties. The Medicare and Medicaid data bank is a case in point. Congress required information on millions of employees to save the Federal Government money. Yet, it will cost employers more money to comply than the Government saves. Congress must stop passing laws that impose large, unjustified, administrative burdens on other entities. It must consider the impact of its actions on the whole economy and not just on the Government.

In summary, the reporting requirement for the Medicare and Medicaid data bank is duplicative, burdensome, ineffective, and unnecessary. The GAO has characterized it as creating an avalanche of unnecessary paperwork for both HCFA and employers. It penalizes employers who provide health care benefits to their workers—exactly the opposite goal we should be pursuing. The data bank should be repealed and a more cost-effective approach should be found to ensure that Medicare and Medicaid are appropriately reimbursed by primary payors.

Mr. President, the 90 associations, organizations, and individual employers in this coalition continue to demand repeal of this law. Their message is clear. The Federal Government must stop imposing unjustified burdens on the private sector.●

KYL AMENDMENT NO. 1515

(Ordered to lie on the table.)

Mr. KYL submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 75, between lines 12 and 13, insert the following:

''(c) In reviewing an agency interpretation of a statute made in a rulemaking or an adjudication, the reviewing court shall—

''(1) hold erroneous and unlawful an agency interpretation that fails to give effect to the unambiguously expressed intent of Congress; or

''(2) if the statute is silent or ambiguous with respect to an issue, hold arbitrary and capricious or an abuse of discretion an agency action for which the agency has—

''(A) refused or failed to consider a permissible construction of the statute on the ground that the statute precludes consideration of that interpretation; or

''(B) failed to explain in a reasoned analysis why the agency selected the interpretation it chose and why it rejected other permissible interpretations of the statute.

''(d) Notwithstanding any other provision of law, the provisions of subsection (c) shall apply to, and supplement, the requirements contained in any statute for the review of final agency action that is not otherwise subject to this section.

JOHNSTON AMENDMENT NO. 1516

Mr. JOHNSTON proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 25, line 19 strike out ''180 days'' and insert in lieu thereof ''one year''.

BAUCUS (AND OTHERS) AMENDMENT NO. 1517

Mr. JOHNSTON (for Mr. BAUCUS, Mr. JOHNSTON, Mr. LAUTENBERG, Mr. BRADLEY, Mrs. MURRAY, Mrs. FEINSTEIN, Mr. REID, Mr. MOYNIHAN, Mr. GLENN, and Mr. KENNEDY) proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

Strike out all of section 628 (on p. 42 beginning at line 3 strike out all through line 13 on p. 44) and renumber section 629 as section 628.

On p. 73 in the table of contents for SUBCHAPTER II—ANALYSIS OF AGENCY RULES, replace ''628. Requirements for major environmental management activities'' with ''628. Petition for alternative method of compliance''.

On page 57, lines 6 and 7 strike out the phrase ''or a major environmental management activity''.

KOHL AMENDMENT NO. 1518

(Ordered to lie on the table.)

Mr. KOHL submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 46, insert between lines 4 and 5 the following:

''630. NONAPPLICABILITY TO CERTAIN NEGOTIATED RULES.

''(a) The provisions of subchapters II and III of chapter 6 of title 5, United States Code (as added by section 4 of this Act) shall not apply to any rule developed pursuant to procedures authorized by subchapter III of chapter 5 of such title (relating to consensual rule-making through negotiation), unless the rule to be proposed on promulgated by the agency is significantly different from the consensus developed through such procedures.

''(b) The Administrative Conference of the United States shall, no later than March 31, 1996, submit a report to the appropriate committees of the Congress describing the experience of agencies with consensus procedures that in its judgement are equivalent in effect to those specified by subchapter III of chapter 5 and with respect to which it would be appropriate to make applicable the provisions of subsection (a) of this section. In addition, the report shall include an assessment of the effects of the application of the Federal Advisory Committee Act to consensual rule-making procedures and may make recommendations in connection therewith.''

FORD AMENDMENT NO. 1519

(Ordered to lie on the table.)

Mr. FORD submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 14, line 16, strike the semicolon and insert the following: '', and includes Federal approval of a plan or program adopted by 2 or more States that contains parallel or coordinated provisions that were developed in response to a Federal direction or under threat of Federal action;

REID AMENDMENTS NO. 1520–1522

(Ordered to lie on the table.)

Mr. REID submitted three amendments intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

AMENDMENT NO. 1520

On page 42, line 19, strike out ''$10,000,000'' and insert in lieu thereof ''$100,000,000''.

AMENDMENT NO. 1521

On page 43, line 7, strike out ''or welfare'' and insert in lieu thereof '', welfare, or the environment''.

AMENDMENT NO. 1522

On page 43, beginning with line 8, strike out all through line 7 on page 44.

CAMPBELL AMENDMENT NO. 1523

(Ordered to lie on the table.)

Mr. CAMPBELL submitted an amendment intended to be proposed by him to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 14, after line 16, amend section 621 of title 5, United States Code, as added by section 4(a) of the amendment No. 1487 by inserting after paragraph (5), the following new paragraph:

''(6) The term 'major rule' does not include a rule that approves, in whole or in part, a plan or program that provides for the implementation, maintenance, or enforcement of Federal standards or requirements adopted by an individual State;''

BOXER AMENDMENT NO. 1524

Mrs. BOXER (for herself, Mrs. MURRAY, Ms. MIKULSKI, Mr. LAUTENBERG, Mr. BRADLEY, Mrs. FEINSTEIN, Mr. DORGAN, Mr. KENNEDY, Mr. REID, Mr. BIDEN, Mr. LEAHY, Ms. MOSELEY-BRAUN, Mr. BUMPERS, and Mr. DASCHLE) proposed an amendment to the bill, supra; as follows:

On page 19, line 7, strike the period and insert the following: ''; or (xiii) a rule intended to implement section 354 of the Public Health Service Act (42 U.S.C. 263b) (as added by section 2 of the Mammography Quality Standards Act of 1992).''.

DOLE AMENDMENT NO. 1525

Mr. DOLE proposed an amendment to amendment No. 1524, proposed by Mrs. BOXER, to the bill, S. 343, supra; as follows:

In lieu of the matter proposed to be inserted, insert the following:

It is the sense of the Senate that nothing in this Act is intended to delay the timely promulgation of any regulations that would meet a human health or safety threat, including any rules that would reduce illness or mortality from the following: heart disease, cancer, stroke, chronic obstructive lung diseases, pneumonia and influenza, diabetes mellitus, human immunodeficiency virus infection, or water- or food-borne pathogens, polio, tuberculosis, measles, viral hepatitis, syphilis, or all other infectious and parasitic diseases.

GRAHAM AMENDMENTS NO. 1526–1529

(Ordered to lie on the table.)

Mr. GRAHAM submitted four amendments intended to be proposed by him to amendment No. 1487, proposed by Mr. DOLE, to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1526

On page 4, line 9, insert before the semicolon the following: '', including, where practicable, performance-based standards''.

AMENDMENT NO. 1527

On page 7, line 18, insert ''any performance-based standards,'' after ''of,''.

AMENDMENT NO. 1528

On page 77, line 6, insert before the semicolon the following: '', including any performance-based standards''.

AMENDMENT NO. 1529

On page 92, line 20, insert ''the achievement of any performance-based standards and'' after ''statement,''.

CAMPBELL (AND OTHERS) AMENDMENT NO. 1530

(Ordered to lie on the table.)

Mr. CAMPBELL (for himself, Mr. WARNER, and Mr. ROBB) submitted an amendment intended to be proposed by them to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 14, after line 16, amend section 621 of title 5, United States Code, as added by section 4(a) of the amendment No. 1487 by inserting after paragraph (5), the following new paragraph:

''(6) The term 'major rule' does not include a rule that approves, in whole or in part, a plan or program that provides for the implementation, maintenance, or enforcement of Federal standards or requirements adopted by an individual State that is not part of a coordinated, multi-state program.

HATCH AMENDMENT NO. 1531

Mr. HATCH proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

At the appropriate place in the amendment, add the following:

It is the sense of the Senate that nothing in this Act is intended to delay the timely promulgation of any regulations that would meet a human health or safety threat, including any rules that would reduce illness or mortality from the following: heart disease, cancer, stroke, chronic obstructive lung diseases, pneumonia and influenza, diabetes mellitus, human immunodeficiency virus infection, or water or food borne pathogens, polio, tuberculosis, measles, viral hepatitis, syphilis, or all other infectious and parasitic diseases.

BOXER AMENDMENT NO. 1532

Mrs. BOXER (for herself, Mrs. MURRAY, Ms. MIKULSKI, Mr. LAUTENBERG, Mr. BRADLEY, Mrs. FEINSTEIN, Mr. DORGAN, Mr. KENNEDY, Mr. REID, Mr. BUMPERS, Mr. BIDEN, Mr. LEAHY, Ms. MOSELEY-BRAUN, Mr. DASCHLE, and Mr. COHEN) proposed an amendment to the bill, supra; as follows:

On page 19, line 7, strike the period and insert the following: ''; or (xiii) a rule intended to implement section 354 of the Public Health Service Act (42 U.S.C. 263b) (as added by section 2 of the Mammography Quality Standards Act of 1992).''.

DOMENICI (AND OTHERS) AMENDMENT NO. 1533

Mr. DOMENICI (for himself, Mr. BOND, Mr. BINGAMAN, Mr. COHEN, and Mr. ABRAHAM) proposed an amendment to amendment No. 1487, proposed by Mr. DOLE, to the bill, S. 343, supra; as follows:

AMENDMENT NO. 1533

At the appropriate place in the Dole substitute, add the following new title:

TITLE II—AGENCY RESPONSIVENESS TO SMALL BUSINESSES

Subtitle A—Small Business Advocacy Review

SEC. 201. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) AGENCY.—The term ''agency'' means—

(A) with respect to the Environmental Small Business Advocacy Review Panel, the Environmental Protection Agency; and

(B) with respect to the Occupational Safety and Health Small Business Advocacy Review Panel, the Occupational Safety and Health Administration of the Department of Labor.

(2) AGENCY HEAD.—The term ''agency head'' means—

(A) with respect to the Environmental Small Business Advocacy Review Panel, the Administrator of the Environmental Protection Agency; and

(B) with respect to the Occupational Safety and Health Small Business Advocacy Review Panel, the Assistant Secretary for Occupational Safety and Health of the Department of Labor.

(3) CHAIRPERSON.—The term ''chairperson'' means—

(A) with respect to the Environmental Small Business Advocacy Review Panel, the chairperson of such review panel designated under section 202(a); and

(B) with respect to the Occupational Safety and Health Small Business Advocacy Review Panel, the chairperson of such review panel designated under section 202(b).

(4) CHIEF COUNSEL FOR ADVOCACY.—The term ''Chief Counsel for Advocacy'' means the Chief Counsel for Advocacy of the Small Business Administration.

(5) FINAL RULE.—The term ''final rule'' means any final rule or interim final rule issued by an agency for which a review panel has been established under section 202(c)(2)(A).

(6) OFFICE.—The term ''Office'' means the Office of Advocacy of the Small Business Administration.

(7) REVIEW PANEL.—The term ''review panel'' means—

(A) with respect to a significant rule of the Environmental Protection Agency, an Environmental Small Business Advocacy Review Panel established under section 202(c)(2)(A); and

(B) with respect to a significant rule of the Occupational Safety and Health Administration of the Department of Labor, an Occupational Safety and Health Small Business Advocacy Review Panel established under section 202(c)(2)(A).

(8) RULE.—The term ''rule''—

(A) means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of the agency; and

(B) does not include any rule that is limited to agency organization, management, or personnel matters.

(9) SIGNIFICANT RULE.—The term ''significant rule'' means any rule proposed by an agency that the chairperson, in consultation with the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, reasonably estimates would have—

(A) an annual aggregate impact on the private sector in an amount equal to not less than $50,000,000; and

(B) an impact on small businesses.

(10) SMALL BUSINESS.—The term ''small business'' has the same meaning as the term ''small business concern'' in section 3 of the Small Business Act.

SEC. 202. SMALL BUSINESS ADVOCACY CHAIRPERSONS.

(a) CHAIRPERSON OF ENVIRONMENTAL REVIEW PANELS.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall designate an employee of the Environmental Protection Agency, who is a member of the Senior Executive Service (as that term is defined in section 2101a of title 5, United States Code) and whose immediate supervisor is appointed by the President, to serve as the chairperson of each Environmental Small Business Advocacy Review Panel and to carry out this subtitle with respect to the Environmental Protection Agency.

(2) DISABILITY OR ABSENCE.—If the employee designated to serve as chairperson under paragraph (1) is unable to serve as chairperson because of disability or absence, the Administrator of the Environmental Protection Agency shall designate another employee who meets the qualifications of paragraph (1) to serve as chairperson.

(b) CHAIRPERSON OF OSHA REVIEW PANELS.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Assistant Secretary for Occupational Safety and Health of the Department of Labor shall designate an employee of the Occupational Safety and Health Administration of the Department of Labor, who is a member of the Senior Executive Service (as that term is defined in section 2101a of title 5, United States Code) and whose immediate supervisor is appointed by the President, to serve as the chairperson of each Occupational Safety and Health Small Business Advocacy Review Panel and to carry out the purposes of this subtitle with respect to the Occupational Safety and Health Administration.

(2) DISABILITY OR ABSENCE.—If the employee designated to serve as chairperson under paragraph (1) is unable to serve as chairperson because of disability of absence, the Assistant Secretary for Occupational Safety and Health of the Department of Labor shall designate another employee who meets the qualifications of paragraph (1) to serve as chairperson.

(c) DUTIES OF THE CHAIRPERSON.—

(1) INITIAL DETERMINATION AND NOTIFICATION.—

(A) TIMING.—The chairperson shall take the actions described in subparagraph (B) not later than 45 days before the earlier of—

(i) the date of publication in the Federal Register by an agency of a general notice of proposed rulemaking under section 553(b) of title 5, United States Code, or any other provision of law; or

(ii) the date of publication in the Federal Register by an agency of a proposed rule.

(B) ACTIONS.—With respect to a proposed rule that is the subject of a publication described in clause (i) or (ii) of subparagraph (A), the chairperson shall—

(i) determine whether the subject proposed rule constitutes a significant rule, as defined in section 201(9); and

(ii) if the proposed rule is determined to constitute a significant rule, notify the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget and the Chief Counsel for Advocacy to appoint review panel members for evaluation of the subject significant rule.

(2) ESTABLISHMENT OF REVIEW PANELS.—

(A) IN GENERAL.—Not later than 15 days after receiving notice under paragraph (1)(B)(ii), or such longer period as the chairperson may allow, review panel members shall be appointed by the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, the Chief Counsel for Advocacy, and the chairperson in accordance with section 203(b).

(B) EXCEPTIONS.—A review panel shall be established in accordance with subparagraph (A) unless the chairperson, in consultation with the Chief Counsel for Advocacy, determines (and notifies the agency in writing of such determination) that—

(i) a good faith effort to secure enough non-Federal employee review panel members necessary to constitute a quorum with respect to the subject significant rule was unsuccessful; and

(ii) compliance with this subtitle is not required with respect to the subject significant rule due to a lack of availability of private sector interests.

(d) DUTIES REGARDING FINAL RULE.—

(1) IN GENERAL.—Not later than 45 days before the issuance of a significant final rule, the chairperson shall—

(A) notify panel members of the intent of the agency to issue a final rule;

(B) provide panel members with a dated draft of the final rule to be issued;

(C) solicit comments from panel members in connection with the duties of the review panel described in section 203(a); and

(D) if the chairperson determines that such action is necessary, call one or more meetings of the review panel and, if a quorum is present, direct the review panel to review, discuss, or clarify any issue related to the subject final rule or the preparation of the report under paragraph (2).

(2) REPORT.—Except as provided in section 204(b), not later than 5 days before the issuance of a final rule, the chairperson shall submit a report in accordance with section 204(a).

SEC. 203. SMALL BUSINESS ADVOCACY REVIEW PANELS.

(a) GENERAL DUTIES.—Before any publication described in clause (i) or (ii) of section 202(c)(1)(A) of a proposed significant rule, and again before the issuance of such rule as a final rule, the review panel shall, in accordance with this subtitle provide technical guidance to the agency, including guidance relating to—

(1) the applicability of the proposed rule to small businesses;

(2) compliance with the rule by small businesses;

(3) the consistency or redundancy of the proposed rule with respect to other Federal, State, and local laws or regulations and recordkeeping requirements imposed on small businesses; and

(4) any other concerns posed by the proposed rule that may impact significantly upon small businesses.

(b) MEMBERSHIP.—Each review panel shall be composed of—

(1) the chairperson;

(2) not less than 1 nor more than 3 members appointed by the chairperson from among employees of the agency who would be responsible for carrying out the subject significant rule;

(3) 1 member appointed by the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget from among the employees of that office who have specific knowledge of or responsibilities relating to the regulatory responsibilities of the agency that would be responsible for carrying out the subject significant rule;

(4) 1 member appointed by the Chief Counsel for Advocacy from among the employees of the Office; and

(5) not less than 1 nor more than 3 members selected by the Chief Counsel for Advocacy from among individuals who are representatives of—

(A) small businesses that would be impacted by the significant rule;

(B) small business sectors or industries that would be especially impacted by the significant rule; or

(C) organizations whose memberships are comprised of a cross-section of small businesses.

(c) PERIOD OF APPOINTMENT; VACANCIES.—

(1) PERIOD OF APPOINTMENT.—Each review panel member, other than the chairperson, shall be appointed for a term beginning on the date on which the appointment is made and ending on the date on which the report or written record is submitted under section 204.

(2) VACANCIES.—Any vacancy on a review panel shall not affect the powers of the review panel, but shall be filled in the same manner as the original appointment.

(d) QUORUM.—A quorum for the conduct of business by a review panel shall consist of 1 member appointed from each of paragraphs (2) through (5) of subsection (b).

(e) MEETINGS.—

(1) IN GENERAL.—Subject to paragraph (2), the meetings of the review panel shall be at the call of the chairperson.

(2) INITIAL MEETING.—Not later than 15 days after all review panel members necessary to constitute a quorum have been appointed under subsection (b), the chairperson shall conduct the initial meeting of the review panel.

(f) POWERS OF REVIEW PANEL.—

(1) INFORMATION FROM FEDERAL AGENCIES.—A review panel may secure, directly from any Federal department or agency, such information as the review panel considers necessary to carry out this subtitle. Upon request of the chairperson, the head of such department or agency shall furnish such information to the review panel.

(2) POSTAL SERVICES.—A review panel may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(g) NONCOMPENSATION OF MEMBERS.—

(1) IN GENERAL.—Members of the review panel who are not officers or employees of the Federal Government shall serve without compensation.

(2) FEDERAL EMPLOYEES.—Members of the review panel who are officers or employees of the Federal Government shall serve without compensation in addition to that received for their services as officers or employees of the Federal Government.

(h) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to a review panel without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(i) CONSULTATION WITH OTHER ENTITIES.—In carrying out this subtitle, the chairperson shall consult and coordinate, to the maximum extent practicable, the activities of the review panel with each office of the agency that is responsible for the provision of data or technical advice concerning a significant rule.

SEC. 204. REPORT.

(a) IN GENERAL.—Except as provided in subsection (b), the chairperson shall, in accordance with section 202(d)(2), submit to the appropriate employees of the agency who would be responsible for carrying out the subject significant rule and to the appropriate committees of the Senate and the House of Representatives a report, which shall include—

(1) the findings and recommendations of the review panel with respect to the significant rule, including both the majority and minority views of the review panel members, regardless of the consensus of opinions that may derive from the meetings of the review panel; and

(2) recommendations regarding whether a survey with respect to the subject significant rule should be conducted under section 207, and—

(A) if so—

(i) a timeframe during which the survey should be conducted, taking into account the time required to implement the rule and to gather appropriate data; and

(ii) any recommendations of the review panel regarding the contents of the survey; and

(B) if not, the reasons why the survey is not recommended.

(b) FAILURE TO SUBMIT REPORT.—If the chairperson fails to submit a report under subsection (a), not later than the date on which the final rule is issued, the chairperson shall—

(1) prepare a written record of such failure detailing the reasons therefore; and

(2) submit a copy of such written record to the head of the agency and to the appropriate committees of the Congress.

SEC. 205. APPLICABILITY OF OTHER LAW; JUDICIAL REVIEW.

(a) INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act do not apply to any review panel established in accordance with this subtitle.

(b) PROHIBITION ON JUDICIAL REVIEW.—No action or inaction of a review panel, including any recommendations or advice of a review panel or any procedure or process of a review panel, may be subject to judicial review by a court of the United States under chapter 7 of title 5, United States Code, or any other provision of law.

SEC. 206. SURVEY.

(a) IN GENERAL.—If a review panel makes a recommendation in any report submitted under section 204(a) that a survey should be conducted with respect to a significant rule, the agency shall contract with a private sector auditing firm or other survey-related organization to conduct a survey of a cross-section of the small businesses impacted by the rule.

(b) CONTENTS OF SURVEY.—Each survey conducted under this section shall address the impact of the significant rule on small businesses, including—

(1) the applicability of the rule to various small businesses;

(2) the degree to which the rule is easy to read and comprehend;

(3) the costs to implement the rule;

(4) any recordkeeping requirements imposed by the rule; and

(5) any other technical or general issues related to the rule.

(c) AVAILABILITY OF SURVEY RESULTS.—The results of each survey conducted under this section shall be made available—

(1) to each interested Federal agency; and

(2) upon request, to any other interested party, including organizations, individuals, State and local governments, and the Congress.

Subtitle B—Regulatory Ombudsmen

SEC. 211. SMALL BUSINESS AND AGRICULTURE OMBUDSMEN.

The Small Business Act (15 U.S.C. 631 et seq.) is amended—

(1) by redesignating section 30 as section 31; and

(2) by inserting after section 29 the following new section:

"SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.

''(a) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(1) BOARD.—The term 'Board' means a Small Business Regulatory Fairness Board established under subsection (c).

''(2) COVERED AGENCY.—The term 'covered agency' means any agency that, as of the date of enactment of the Comprehensive Regulatory Reform Act of 1995, has promulgated any rule for which a regulatory flexibility analysis was required under section 605 of title 5, United States Code, and any other agency that promulgates any such rule, as of the date of such promulgation.

''(3) OMBUDSMAN.—The term 'ombudsman' means a Regional Small Business and Agriculture Ombudsman designated under subsection (b).

''(4) REGION.—The term 'region' means any area for which the Administrator has established a regional office of the Administration pursuant to section 4(a).

''(5) RULE.—The term 'rule' has the same meaning as in section 601(2) of title 5, United States Code.

''(b) OMBUDSMAN.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Comprehensive Regulatory Reform Act of 1995, the Administrator shall designate Regional Small Business and Agriculture Ombudsmen in accordance with this subsection.

''(2) DUTIES.—Each ombudsman designated under paragraph (1) shall—

''(A) on a confidential basis, solicit and receive comments from small business concerns regarding the enforcement activities of covered agencies;

''(B) based on comments received under subparagraph (A), annually assign and publish a small business responsiveness rating to each covered agency;

''(C) publish periodic reports compiling the comments received under subparagraph (A);

''(D) coordinate the activities of the Small Business Regulatory Fairness Board established under subsection (c); and

''(E) establish a toll-free telephone number to receive comments from small business concerns under subparagraph (A).''.

SEC. 212. SMALL BUSINESS REGULATORY FAIRNESS BOARDS.

Section 30 of the Small Business Act (as added by section 211 of this Act) is amended by adding at the end the following new subsection:

''(c) SMALL BUSINESS REGULATORY FAIRNESS BOARDS.—

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Comprehensive Regulatory Reform Act of 1995, the Administrator shall establish in each region a Small Business Regulatory Fairness Board in accordance with this subsection.

''(2) DUTIES.—Each Board established under paragraph (1) shall—

''(A) advise the ombudsman on matters of concern to small business concerns relating to the enforcement activities of covered agencies;

''(B) issue advisory findings and recommendations with respect to small business concerns;

''(C) review and approve, prior to publication—

''(i) each small business responsiveness rating assigned under subsection (b)(2)(B); and

''(ii) each periodic report prepared under subsection (b)(2)(C); and

''(D) prepare written opinions regarding the reasonableness and understandability of rules issued by covered agencies.

''(3) MEMBERSHIP.—Each Board shall consist of—

''(A) 1 member appointed by the President;

''(B) 1 member appointed by the Speaker of the House of Representatives;

''(C) 1 member appointed by the Minority Leader of the House of Representatives;

''(D) 1 member appointed by the Majority Leader of the Senate; and

''(E) 1 member appointed by the Minority Leader of the Senate.

''(4) PERIOD OF APPOINTMENT; VACANCIES.—

''(A) PERIOD OF APPOINTMENT.—

''(i) PRESIDENTIAL APPOINTEES.—Each member of the Board appointed under subparagraph (A) of paragraph (2) shall be appointed for a term of 3 years, except that the initial member appointed under such subparagraph shall be appointed for a term of 1 year.

''(ii) HOUSE OF REPRESENTATIVES APPOINTEES.—Each member of the Board appointed under subparagraph (B) or (C) of paragraph (2) shall be appointed for a term of 3 years, except that the initial members appointed under such subparagraphs shall each be appointed for a term of 2 years.

''(iii) SENATE APPOINTEES.—Each member of the Board appointed under subparagraph (D) or (E) of paragraph (2) shall be appointed for a term of 3 years.

''(B) VACANCIES.—Any vacancy on the Board—

''(i) shall not affect the powers of the Board; and

''(ii) shall be filled in the same manner and under the same terms and conditions as the original appointment.

''(5) CHAIRPERSON.—The Board shall select a Chairperson from among the members of the Board.

''(6) MEETINGS.—

''(A) IN GENERAL.—The Board shall meet at the call of the Chairperson.

''(B) INITIAL MEETING.—Not later than 90 days after the date on which all members of the Board have been appointed, the Board shall hold its first meeting.

''(7) QUORUM.—A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

''(8) POWERS OF THE BOARD.—

''(A) HEARINGS.—The Board or, at its direction, any subcommittee or member of the Board, may, for the purpose of carrying out the provisions of this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Board determines to be appropriate.

''(B) WITNESS ALLOWANCES AND FEES.—Section 1821 of title 28, United States Code, shall apply to witnesses requested to appear at any hearing of the Board. The per diem and mileage allowances for any witness shall be paid from funds available to pay the expenses of the Board.

''(C) INFORMATION FROM FEDERAL AGENCIES.—Upon the request of the Chairperson, the Board may secure directly from the head of any Federal department or agency such information as the Board considers necessary to carry out this section.

''(D) POSTAL SERVICES.—The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

''(E) DONATIONS.—The Board may accept, use, and dispose of donations of services or property.

''(9) BOARD PERSONNEL MATTERS.—

''(A) COMPENSATION.—Members of the Board shall serve without compensation.

''(B) TRAVEL EXPENSES.—Members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.''.

SEC. 213. JUDICIAL REVIEW.

(a) PROHIBITION.—No action or inaction of a Regional Small Business and Agriculture Ombudsman or a Small Business Regulatory Fairness Board, including any recommendations or advice of a Regional Small Business and Agriculture Ombudsman or a Small Business Regulatory Fairness Board or any procedure or process of a Regional Small Business and Agriculture Ombudsman or a Small Business Regulatory Fairness Board, may be subject to judicial review by a court of the United States under chapter 7 of title 5, United States Code, or any other provision of law.

(b) DEFINITIONS.—For purposes of this section—

(1) the term ''Regional Small Business and Agriculture Ombudsman'' means any ombudsman designated under section 30(b) of the Small Business Act, as added by section 211 of this Act.

(2) the term ''Small Business Regulatory Fairness Board'' means any board established under section 30(c) of the Small Business Act, as added by section 212 of this Act.

BROWN AMENDMENT NO. 1534

(Ordered to lie on the table.)

Mr. BROWN submitted an amendment intended to be proposed by him to amendment No. 1534, proposed by Mr. DOLE, supra; as follows:

At the appropriate place, insert the following:

SEC. . EXECUTIVE PREEMPTION OF STATE LAW.

(a) IN GENERAL.—Chapter 5 of title 5, United States Code, is amended by inserting after section 559 the following new section:

''§ 560. Preemption of State law

''(a) No agency shall construe any authorization in a statute for the issuance of regulations as authorizing preemption of State law by rulemaking or other agency action, unless—

''(1) the statute expressly authorizes issuance of preemptive regulations;

''(2) there is clear and convincing evidence that the Congress intended to delegate to the agency the authority to issue regulations preempting State law; or

''(3) the agency concludes that the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute.

''(b) Any regulatory preemption of State law shall be narrowly tailored to achieve the objectives of the statute pursuant to which the regulations are promulgated.

''(c) When an agency proposes to act through rulemaking or other agency action to preempt State law, the agency shall provide all affected States notice and an opportunity for appropriate participation in the proceedings.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 5, United States Code, is amended by adding after the item for section 559 the following:

''560. Preemption of State law.''.

LAUTENBERG (AND OTHERS) AMENDMENT NO. 1535

Mr. LAUTENBERG (for himself, Mr. BAUCUS, Mr. LIEBERMAN, Mr. KERRY, Mr. BRADLEY, Mrs. BOXER, Mr. SIMON Mr. KENNEDY, and Mr. MOYNIHAN) proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

On page 72, strike lines 1 through 15.

FEINGOLD (AND OTHERS) AMENDMENT NO. 1536

Mr. FEINGOLD proposed an amendment to the amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

At the appropriate place in the substitute amendment, add the following new section:

SEC. . EQUAL ACCESS TO JUSTICE REFORM.

(a) SHORT TITLE.—This section may be cited as the ''Equal Access to Justice Reform Amendments of 1995''.

(b) AWARD OF COSTS AND FEES.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(a)(2) of title 5, United States Code, is amended by inserting after ''(2)'' the following: ''At any time after the commencement of an adversary adjudication covered by this section, the adjudicative officer may ask a party to declare whether such party intends to seek an award of fees and expenses against the agency should it prevail.''

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(1)(B) of title 28, United States Code, is amended by inserting after ''(B)'' the following: ''At any time after the commencement of an adversary adjudication covered by this section, the court may ask a party to declare whether such party intends to seek an award of fees and expenses against the agency should it prevail.''.

(c) HOURLY RATE FOR ATTORNEY FEES.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(b)(1)(A)(ii) of title 5, United States Code, is amended by striking out all beginning with ''$75 per hour'' and inserting in lieu thereof ''$125 per hour unless the agency determines by regulation that an increase in the cost-of-living based on the date of final disposition justifies a higher fee.);''.

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(2)(A)(ii) of title 28, United States Code, is amended by striking out all beginning with ''$75 per hour'' and inserting in lieu thereof ''$125 per hour unless the court determines that an increase in the cost-of-living based on the date of final disposition justifies a higher fee.);''.

(d) PAYMENT FROM AGENCY APPROPRIATIONS.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(d) of title 5, United States Code, is amended by adding at the end thereof the following: ''Fees and expenses awarded under this subsection may not be paid from the claims and judgments account of the Treasury from funds appropriated pursuant to section 1304 of title 31.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(4) of title 28, United States Code, is amended by adding at the end thereof the following: ''Fees and expenses awarded under this subsection may not be paid from the claims and judgments account of the Treasury from funds appropriated pursuant to section 1304 of title 31.''.

(e) OFFERS OF SETTLEMENT.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504 of title 5, United States Code, is amended—

(A) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(B) by inserting after subsection (d) the following new subsection:

''(e)(1) At any time after the filing of an application for fees and other expenses under this section, an agency from which a fee award is sought may serve upon the applicant an offer of settlement of the claims made in the application. If within 10 days after service of the offer the applicant serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof.

''(2) An offer not accepted shall be deemed withdrawn. The fact that an offer is made but not accepted shall not preclude a subsequent offer. If any award of fees and expenses for the merits of the proceeding finally obtained by the applicant is not more favorable than the offer, the applicant shall not be entitled to receive an award for attorneys' fees or other expenses incurred in relation to the application for fees and expenses after the date of the offer.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412 of title 28, United States Code, is amended—

(A) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(B) by inserting after subsection (d) the following new subsection:

''(e)(1) At any time after the filing of an application for fees and other expenses under this section, an agency of the United States from which a fee award is sought may serve upon the applicant an offer of settlement of the claims made in the application. If within 10 days after service of the offer the applicant serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof.

''(2) An offer not accepted shall be deemed withdrawn. The fact that an offer is made but not accepted shall not preclude a subsequent offer. If any award of fees and expenses for the merits of the proceeding finally obtained by the applicant is not more favorable than the offer, the applicant shall not be entitled to receive an award for attorneys' fees or other expenses incurred in relation to the application for fees and expenses after the date of the offer.''.

(f) ELIMINATION OF SUBSTANTIAL JUSTIFICATION STANDARD.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504 of title 5, United States Code, is amended—

(A) in subsection (a)(1) by striking out all beginning with '', unless the adjudicative officer'' through ''expenses are sought''; and

(B) in subsection (a)(2) by striking out ''The party shall also allege that the position of the agency was not substantially justified.''.

(2) JUDICIAL PROCEEDINGS.—Section 2412(d) of title 28, United States Code, is amended—

(A) in paragraph (1)(A) by striking out '', unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust'';

(B) in paragraph (1)(B) by striking out ''The party shall also allege that the position of the United States was not substantially justified. Whether or not the position of the United States was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which is made in the civil action for which fees and other expenses are sought.''; and

(C) in paragraph (3) by striking out'', unless the court finds that during such adversary adjudication the position of the United States was substantially justified, or that special circumstances make an award unjust''.

(g) REPORTS TO CONGRESS.—

(1) ADMINISTRATIVE PROCEEDINGS.—No later than 180 days after the date of the enactment of this Act, the Administrative Conference of the United States shall submit a report to the Congress—

(A) providing an analysis of the variations in the frequency of fee awards paid by specific Federal agencies under the provisions of section 504 of title 5, United States Code; and

(B) including recommendations for extending the application of such sections to other Federal agencies and administrative proceedings.

(2) JUDICIAL PROCEEDINGS.—No later than 180 days after the date of the enactment of this Act, the Department of Justice shall submit a report to the Congress—

(A) providing an analysis of the variations in the frequency of fee awards paid by specific Federal districts under the provisions of section 2412 of title 28, United States Code; and

(B) including recommendations for extending the application of such sections to other Federal judicial proceedings.

(h) EFFECTIVE DATE.—The provisions of this section and the amendments made by this Act shall take effect 30 days after the date of the enactment of this Act and shall apply only to an administrative complaint filed with a Federal agency or a civil action filed in a United States court on or after such date.

PRYOR (AND FEINGOLD) AMENDMENT NO. 1537

Mr. PRYOR (for himself and Mr. FEINGOLD) proposed an amendment to the amendment No. 1487 proposed by Mr. DOLE to the bill, S. 343, supra; as follows:

At the appropriate place in the substitute amendment, insert the following new section:

SEC. . CONFLICT OF INTEREST RELATING TO COST-BENEFIT ANALYSES AND RISK ASSESSMENTS.

(a) INFORMATION BEARING ON POSSIBLE CONFLICT OF INTEREST.—

(1) DEFINITION.—For purposes of this section, the term ''contract'' means any contract, agreement, or other arrangement, whether by competitive bid or negotiation, entered into with a Federal agency for any cost-benefit analysis or risk assessment under subchapter II or III of chapter 6 of title 5, United States Code (as added by section 4(a) of this Act). This section shall not apply to the provisions of section 633.

(2) IN GENERAL.—When an agency proposes to enter into a contract with a person or entity, such person shall provide to the agency before entering into such contract all relevant information, as determined by the agency, bearing on whether that person has a possible conflict of interest with respect to being able to render impartial, technically sound, or objective assistance or advice in light of other activities or relationships with other persons.

(3) SUBCONTRACTOR INFORMATION.—A person entering into a contract shall ensure, in accordance with regulations prescribed by the head of the agency, compliance with this section by any subcontractor (other than a supply subcontractor) of such person in the case of any subcontract of more than $10,000.

(b) REQUIRED FINDING THAT NO CONFLICT OF INTEREST EXISTS OR THAT CONFLICTS HAVE BEEN AVOIDED; MITIGATION OF CONFLICT WHEN CONFLICT IS UNAVOIDABLE.—

(1) IN GENERAL.—Subject to paragraph (2), the head of an agency shall not enter into any contract unless the agency head finds, after evaluating all information provided under subsection (a) and any other information otherwise made available that—

(A) it is unlikely that a conflict of interest would exist; or

(B) such conflict has been avoided after appropriate conditions have been included in such contract.

(2) EXCEPTION.—If the head of an agency determines that a conflict of interest exists and that such conflict of interest cannot be avoided by including appropriate conditions in the contract, the agency head may enter into such contract if the agency head—

(A) determines that it is in the best interests of the United States to enter into the contract; and

(B) includes appropriate conditions in such contract to mitigate such conflict.

(c) RULES AND REGULATIONS.—No later than 240 days after the date of the enactment of this Act, the Federal Acquisition Review Council shall publish rules for the implementation of this section, in accordance with section 553 of title 5, United States Code, without regard to subsection (a) of such section.

FEINGOLD (AND OTHERS) AMENDMENT NO. 1538

Mr. FEINGOLD (for himself, Mr. PRYOR, and Mr. SIMON) proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 57, strike out line 18 through line 25 and insert in lieu thereof the following:

''(B) may exclude any person with substantial and relevant expertise as a participant on the basis that such person has a potential financial interest in the outcome, or may include such person if such interest is fully disclosed to the agency, and the agency includes such disclosure as part of the record, unless the result of the review would have a direct and predictable effect on a substantial financial interest of such person.''

HUTCHISON (AND OTHERS) AMENDMENT NO. 1539

Mrs. HUTCHISON (for herself, Mr. HEFLIN, Mr. HATCH, Mr. NICKLES, Mr. CRAIG, and Mr. LOTT) proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

Insert at the appropriate place:

SECTION 709. AGENCY INTERPRETATIONS IN CIVIL AND CRIMINAL ACTIONS.

''(a) No civil or criminal penalty shall be imposed by a court, and no civil administrative penalty shall be imposed by an agency, for the violation of a rule—

''(1) if the court or agency, as appropriate, finds that the rule failed to give the defendant fair warning of the conduct that the rule prohibits or requires; or

''(2) if the court or agency, as appropriate, finds that the defendant—

''(A) reasonably in good faith determined, based upon the language of the rule published in the Federal Register, that the defendant was in compliance with, exempt from, or otherwise not subject to, the requirements of the rule; or

''(B) engaged in the conduct alleged to violate the rule in reliance upon a written statement issued by an appropriate agency official, or by an appropriate official of a State authority to which had been delegated responsibility for implementing or ensuring compliance with the rule, stating that the action complied with, or that the defendant was exempt from, or otherwise not subject to, the requirements of the rule.

''(b) In an action brought to impose a civil or criminal penalty for the violation of a rule, the court, or an agency, as appropriate, shall not give deference to any interpretation of such rule relied on by an agency in

the action that had not been timely published in the Federal Register or communicated to the defendant by the method described in paragraph (a)(2)(B) in a timely manner by the agency, or by a state official described in paragraph (a)(2)(B), prior to the commencement of the alleged violation.

''(c) Except as provided in subsection (d), no agency shall bring any judicial or administrative action to impose a civil or criminal penalty based upon—

''(1) an interpretation of a statute, rule, guidance, agency statement of policy, or license requirement or condition, or

''(2) a written determination of fact made by an appropriate agency official, or state official as described in paragraph (a)(2)(B), after disclosure of the material facts at the time and appropriate review,

if such interpretation or determination is materially different from a prior interpretation or determination made by the agency or the state official described in (a)(2)(B), and if such person, having taken into account all information that was reasonably available at the time of the original interpretation or determination, reasonably relied in good faith upon the prior interpretation or determination.

''(d) Nothing in this section shall be construed to preclude an agency:

''(1) from revising a rule or changing its interpretation of a rule in accordance with sections 552 and 553 of this title, and, subject to the provisions of this section, prospectively enforcing the requirements of such rule as revised or reinterpreted and imposing or seeking a civil or criminal penalty for any subsequent violation of such rule as revised or reinterpreted.

''(2) from making a new determination of fact, and based upon such determination, prospectively applying a particular legal requirement;

''(e) This section shall apply to any action for which a final unappealable judicial order has not been issued prior to the effective date.

GLENN (AND LEVIN) AMENDMENT NO. 1540

Mr. GLENN (for himself and Mr. LEVIN) proposed an amendment to amendment No. 1487 proposed by Mr. DOLE to the bill S. 343, supra; as follows:

On page 66, after line 15, insert:

''SEC. 643. PUBLIC DISCLOSURE OF INFORMATION.

''(a) OMB RESPONSIBILITY.—The Director or other designated officer to whom authority is delegated under section 642, in carrying out the provisions of such 641, shall establish procedures (covering all employees of the Director or other designated officer) to provide public and agency access to information concerning regulatory review actions, including—

''(1) disclosure to the public on an ongoing basis of information regarding the status of regulatory actions undergoing review;

''(2) disclosure to the public, no later than publication of, or other substantive notice to the public concerning a regulatory action, of—

''(A) all written communications, regardless of form or format, including drafts of all proposals and associated analyses, between the Director or other designated officer and the regulatory agency;

''(B) all written communications, regardless of form or format, between the Director or other designated officer and any person not employed by the executive branch of the Federal Government relating to the substance of a regulatory action;

''(C) a record of all oral communications relating to the substance of a regulatory action between the Director or other designated officer and any person not employed by the executive branch of the Federal Government; and

''(D) a written explanation of any review action and the date of such action; and

''(3) disclosure to the regulatory agency, on a timely basis, of—

''(A) all written communications between the Director or other designated officer and any person who is not employed by the executive branch of the Federal Government;

''(B) a record of all oral communications, and an invitation to participate in meetings, relating to the substance of a regulatory action between the Director or other designated officer and any person not employed by the executive branch of the Federal Government; and

''(C) a written explanation of any review action taken concerning an agency regulatory action.

''(b) AGENCY RESPONSIBILITY.—The head of each agency shall—

''(1) disclose to the public the identification of any regulatory action undergoing review under this section and the date upon which such action was submitted for such review; and

''(2) describe in any applicable rulemaking notice the results of any review under this section, including an explanation of any significant changes made to the regulatory action as a consequence of the review.

On page 66, line 16, strike ''643'' and insert in lieu thereof ''644''.

On page 67, line 1, strike ''644'' and insert in lieu thereof ''645''.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet at 9:30 a.m. on Thursday, July 13, 1995, in closed session, to receive a briefing on the recent F–16 shoot-down in Bosnia.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, July 13, 1995, to conduct a hearing on the dollar coin.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. HATCH. Mr. President, I ask unanimous consent that the Finance Committee be permitted to meet on Thursday, July 13, 1995, beginning at 9:30 a.m. in room SD–215, to conduct a hearing on Medicaid.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, July 13, 1995, at 10 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Thursday, July 13, 1995, beginning at 9:30 a.m., in room 485 of the Russell Senate Office Building on S. 479, a bill to provide for administrative procedures to extend Federal recognition to certain Indian groups.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON SMALL BUSINESS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Small Business be authorized to meet during the session of the Senate on Thursday, July 13, 1995, at 9:30 a.m., in room 428A Russell Senate Office Building, to conduct a hearing focusing on the Small Business Investment Company Program.

The PRESIDING OFFICER. Without objection, it is so ordered.

committee on small business

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Small Business be authorized to meet during the session of the Senate on Thursday, July 13, 1995, at 9:30 a.m., in room 428A Russell Senate Office Building, to conduct a markup on legislation which is pending in the committee.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON AGING

Mr. HATCH. Mr. President, I ask unanimous consent that the Subcommittee on Aging of the Committee on Labor and Human Resources be authorized to meet for a hearing on aging Americans access to medical technology, during the session of the Senate on Thursday, July 13, 1995, at 9:30 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON DRINKING WATER, FISHERIES, AND WILDLIFE

Mr. HATCH. Mr. President, I ask unanimous consent that the Subcommittee on Drinking Water, Fisheries, and Wildlife be granted permission to conduct a hearing Thursday, July 13, at 9 a.m., on reauthorization of the Endangered Species Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON FORESTS AND PUBLIC LAND MANAGEMENT

Mr. HATCH. Mr. President, I ask unanimous consent that the Subcommittee on Forests and Public Land Management of the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Thursday, July 13, 1995, for purposes of conducting a subcommittee hearing which is scheduled to begin at 9:30 a.m. The purpose of this hearing is to receive testimony on S. 882, to designate certain public lands in the State of Utah as wilderness, and for other purposes.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON NEAR EASTERN AND SOUTH ASIAN AFFAIRS

Mr. HATCH. Mr. President, I ask unanimous consent that the Near Eastern and South Asian Affairs Subcommittee of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, July 13, 1995, at 2 p.m. to hear testimony on economic development and U.S. assistance in Gaza/Jerico.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

Mr. HATCH. Mr. President, I ask unanimous consent that the Subcommittee on Transportation and Infrastructure be granted permission to conduct an oversight hearing Thursday, July 13, at 2 p.m., on pending GSA building prospectuses, GSA Public Buildings Service cost-savings issues, and S. 1005, the Public Buildings Reform Act of 1995.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

CIVILIAN RADIO ACTIVE WASTE MANAGEMENT PROGRAM

● Mr. MURKOWSKI. Mr. President, the Secretary of Energy has transmitted to the Senate legislation to amend the Nuclear Waste Policy Act of 1982 to create a new funding approach for the Department of Energy's civilian radioactive waste management program. This program was created to meet the Department's obligation under the NWPA to provide for the disposal of spent civilian nuclear fuel in a permanent geologic repository by 1998.

To fund the program, the NWPA requires DOE to collect a fee of one mill per kilowatt hour on electricity generated by nuclear energy. The fee is collected by utilities from their ratepayers in their monthly bills and placed into a special nuclear waste fund in the Treasury. The fund receives approximately $600 million per year from collections and interest. To date, approximately $9 billion in fees and interest has been placed in the fund.

Although the nuclear waste fund has a balance of about $4.9 billion that was collected from ratepayers for precisely this purpose, the money is considered to be on-budget, and as such, is subject to discretionary spending caps under Gramm-Rudman-Hollings. Thus, any increases over past spending levels will require spending reductions in other DOE programs under the spending cap. As a part of the DOE fiscal year 1995 budget request, DOE proposed that future contributions to the nuclear waste fund be set aside in a special off-budget fund for the program, with one-half of those funds available as a permanent appropriation each year. This proposal, which would have required legislative action, was not adopted by the Congress. Instead, increased funding for the program was provided under DOE's discretionary spending caps. In its fiscal year 1996 budget request, DOE has proposed again that a mandatory appropriation be established from the nuclear waste fund of $431.6 million per year. The legislation proposed by DOE would be necessary to effectuate that change.

I believe that this legislation has no chance of success. There is strong opposition to taking the waste fund off budget for a variety of reasons. First in my mind is the limitation on budgetary oversight that would result from such an arrangement. Although DOE will have spent over $4.2 billion through the first quarter of fiscal year 1995 on the program, DOE has conceded that the 1998 deadline for the acceptance of spent nuclear fuel will not be met. Both the Nuclear Waste Technical Review Board and the General Accounting Office have issued reports that are critical of the management of the Yucca Mountain program. Although DOE has recently made progress in improving the management of the program, in the past, overhead has consumed 56 percent of the funding for site characterization.

What is needed is more oversight and involvement by the Congress, not less. The Committee on Energy and Natural Resources is considering legislation that would alter the structure of the NWPA and DOE's program, with the goal of providing for the more efficient use of the ratepayer's money. Funding and oversight issues will be considered in the context of that legislation. Therefore, although I am not introducing this bill as legislation, I am acknowledging receipt of the administration's proposal and request that it be printed in the RECORD.

The material follows;

PROPOSED LEGISLATION

A bill to provide additional flexibility for the Department of Energy's program for the disposal of spent nuclear fuel and high level radioactive waste, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Nuclear Waste Disposal Funding Act''.

SEC. 2. NUCLEAR WASTE FUND AVAILABILITY.

Section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222) is amended by inserting the following after subsection (e):

''(f) NUCLEAR WASTE FUND AVAILABILITY.—(1) If the condition in subsection (g)(2) is met, the net proceeds from the sale of the U.S. Enrichment Corporation which are deposited in a special fund in the Treasury under subsection (g)(1) may be used by the Department for radioactive waste disposal activities under this Act. No more than the following amounts shall be made available in the fiscal year specified—

''(A) for fiscal year 1996, $431,600,000;

''(B) for fiscal year 1997, $540,000,000; and

''(C) for fiscal year 1998, $627,400,000.

The net proceeds are the revenues derived from the sale of U.S. Enrichment Corporation stock, based upon its sales price less cash payments to the purchasers and less the value assigned to highly enriched and natural uranium transferred from the Department to U.S. Enrichment Corporation after February 1, 1995, as specified in the stock offering prospectus of the U.S. Enrichment Corporation. In determining net proceeds, the cash and the value of highly enriched uranium shall be prorated in proportion to the amount of stock that is sold to non-Federal entities.

''(2) In addition to the amounts in paragraph (1), amounts deposited in the Nuclear Waste Fund in fiscal years 1996, 1997, and 1998 resulting from any increase in the fee established under this section shall be available to the Department for expenditure for radioactive waste disposal activities under this Act.

''(3) Amounts available under this subsection shall remain available until expended, without further appropriation but within any specific directives and limitations included in appropriations Acts. Amounts for radioactive waste disposal activities shall be included in the annual budget submitted to Congress for Nuclear Waste Disposal Fund activities.

''(g) OFFSETS.—(1) The net proceeds from the sale of all stock of the U.S. Enrichment Corporation shall be deposited in a special fund in the Treasury and be available for the purposes specified in subsection (f).

''(2) If the President so designates, the net proceeds shall be included in the budget baseline required by the Balanced Budget and Emergency Deficit Control Act of 1985 and shall be counted for the purposes of section 252 of that Act as an offset to direct spending, notwithstanding section 257(e) of that Act.''.●

WHY BALANCE THE FEDERAL BUDGET?

● Mr. SIMON. Mr. President, some may wonder, why is anyone still talking about the budget when the budget has been adopted?

The reality is that until we act on reconciliation and appropriations, we are still a long way from getting our budget problems resolved.

In addition, without a constitutional amendment requiring a balanced budget, I believe the political pressure will mount to cause us to move away from the direction of a balanced budget. That has been our experience in the past. Legislative answers, such as Gramm–Rudman-Hollings, which I voted for, hold up until they become too politically awkward. And any real move on the budget deficit eventually does become politically awkward.

My reason for mentioning all this is that in the midst of the struggle on the budget, I did not get a chance to read carefully the Zero Deficit Plan put out by the Concord Coalition, headed by two of our former colleagues, Senator Warren Rudman and Senator Paul Tsongas.

It is an impressive document. Each of us could probably make some adjustments, but the staff and officers of the Concord Coalition should take great pride in their solid contribution. The executive director of the Concord Coalition is Martha Phillips, formerly on

the staff of the House Budget Committee, and the president is Peter G. Peterson, the former Secretary of Commerce.

The other officers are:

Lloyd Cutler, secretary and treasurer; Dr. John P. White, vice chair, issues committee; Eugene M. Freedman, vice chair, finance committee; David Sawyer, vice chair, public relations; Roger E. Brinner, vice chair; Hon. Maria Cantwell, vice chair; Dr. John W. Gardner, vice chair; Dr. Hanna Holborn Gray, vice chair; Hon. William H. Gray III, vice chair; Dr. George N. Hatsopoulos, vice chair; Hon. Barbara Jordan, vice chair; Harvey M. Meyerhoff, vice chair; Hon. Timothy J. Penny, vice chair; Joseph M. Segel, vice chair; and Paul Volcker, vice chair.

In the introduction to their proposal, they have a statement that responds to the question ''Why Balance the Federal Budget?'' I ask that the statement be printed in the RECORD.

The statement follows:

WHY BALANCE THE FEDERAL BUDGET?

The Zero Deficit Plan is a plan for our economic future. The goal is to assure a more secure, prosperous future for us and our children.

We are not seeking to balance the budget for its own sake. Reducing government spending and increasing taxes means short-term sacrifice. This can only be justified by the long-term economic benefits that will flow from putting our fiscal house in order.

Eliminating the deficit will help put the nation back on the path to lasting prosperity and to a rising standard of living in the next century. That larger goal cannot be achieved as long as the nation continues to run large budget deficits in good times and bad, year in and year out.

A balanced budget and the nation's economic future are directly linked. There is a tie between budget deficits today and what we can enjoy tomorrow:

Because there are only so many hours in each day, the principal way in which Americans can increase their standard of living is for each worker to become more productive: workers must produce more and better goods and services for each hour worked.

For workers to become more productive, investments must be made in education and training; in modernized plants, equipment, and productive techniques; in new discoveries and innovations; and in transportation, communications, and other infrastructure.

To make these investments, there must be a pool of savings that can be used for this purpose. Historically, the United States has had a particularly low rate of private savings, but, what is worse, the federal government's deficit is financed by soaking up most of the savings we do manage to put away. When the government spends more money than it has, it borrows the rest. Most of the money borrowed comes from private savings.

Only if the government stops using up private savings will the money be available for investment. Balancing the federal budget will free up the nation's savings for investments that would increase our productivity, create good jobs, and raise our standard of living.

The declining trend in what Americans produce for each hour worked illustrates how serious a problem this has become. From 1946 to 1973, what Americans produced for each hour of work increased 2.9 percent each year. From 1974 to 1994, the increase was only 1.1 percent a year. If productivity had improved as rapidly in the past two decades as it had in the previous three, the median annual family income today would be over $50,500, instead of the $35,000 it is. That $15,500-a-year gap is related to our large federal deficit. But because we never had the $15,500, we don't miss it in the same way we would if we had first enjoyed the income and then given it up. As long as incomes continue to creep up even slightly from one year to the next, the cumulative shortfalls in income remains largely hidden from public indignation.

Solving the deficit problem does not automatically guarantee a rosy economic future. Other developments are needed to complement a balanced budget: reduced consumption, increased savings and investment, improved productivity, education, inflation and interest rates at desirable levels, and a favorable worldwide economic climate. But unless we get our deficit problem behind us, we will remain unable to take advantage of these other necessary economic ingredients.

We cannot ignore the consequences of deficits much longer. Growing commitments made by one generation to the next cannot be honored on empty pocketbooks. A stagnant long-term economy cannot support retirement payments, medical care, and all the other benefits and services we would like. And it cannot support economic opportunity for today's youth to live as well as their parents' generation.

Massive federal budget deficits threaten our economy in other ways as well. They increase the likelihood of reigniting inflation by putting pressure on the government simply to print more money to pay off its debt. The more dollars are printed, the less each dollar in your wallet is worth.

As foreign ownership of our resources has grown, so has our dependence on the actions of foreign investors and governments. These entities have come to own more and more of our productive capacity. In addition, foreign investors have bought up almost 20 percent of our government's recently issued debt. As foreign holding of U.S. debt grows, so will U.S. interest payments to foreign nationals.

Huge, continual deficits strangle the ability of even a nation as rich as ours to respond when emergencies arise or when new opportunities or problems emerge, including recession. With our government deep in debt and continuing to run huge deficits, we remain unable to shoulder new responsibilities.

HOW LARGE ARE OUR ANNUAL DEFICITS AND ACCUMULATED NATIONAL DEBT?

In 1994, our government spent $203 billion more than it raised in taxes. That deficit amounts to $780 for every single American, or $3,120 for each family of four. That is the sum your government borrowed on your behalf last year, whether you wanted it to or not.

The $203 billion deficit was equal to 14 percent of federal spending. For every dollar the government spent, 14 cents was borrowed.

The $203 billion deficit was for all government operations in 1994. It included the $57 billion 1994 surplus in the Social Security Trust Fund., and a $1 billion deficit in the Postal Service. This means that all other government spending exceeded other revenues by $259 billion.

Our national debt, the net accumulation of all of the annual deficits we have run and all the money we have borrowed from government trust funds, stood at $4.8 trillion in May 1995. That is $18,460 for every single American, or $73,840 for each family of four.

The $4.8 trillion debt is equal to 67 percent of our national economic output in 1995 (called the gross domestic product, or GDP). If every American worked from January 1 through September 1 and paid all of his or her earnings to the federal government and spent nothing on food, clothing, shelter, or anything else, the public debt would still not quite be paid off.

Some people say there is no line-item in the federal budget labeled ''waste, fraud, and abuse.'' But, in a way, there is. It is called interest on the national debt, and last year it cost our government $203 billion. We spent more on interest than we spent on the entire U.S. military and almost as much as we spent on Social Security. What did we get for it? Nothing—not a single Social Security check, military aircraft or mile of highway—not even a single school lunch.

Because annual interest payments on the debt are so large, our government is actually borrowing just to pay interest. It is as if we were running up our MasterCard to pay off our debt to Visa, knowing that next year we will have to borrow even more from American Express to keep the game going.

HOW DID WE ACCUMULATE A $5 TRILLION NATIONAL DEBT?

Our nation was born in debt, a consequence of the high cost of fighting the Revolutionary War. Our first president, George Washington, adopted the practice of running generally balanced budgets. President Thomas Jefferson went one step further, pledging the nation to the goal of paying off its debt within one generation. All subsequent administrations for more than the next century and a half following the founders' lead: running infrequent deficits during most wars and deep recessions, and building surpluses to pay down the national debt in times of peace and relative prosperity.

The Great Depression of the 1930s led to large deficits when government revenues fell dramatically due to the high number of people out of work, who were no longer paying income taxes. Following on the heels of the depression, World War II required still greater borrowing to mobilize 16 million American troops to fight in Europe and Asia.

In the early postwar period, the Truman and Eisenhower administrations and the Congresses with which they worked roughly balanced the budget. Each president presided over three surpluses and five deficits. As the economy boomed, the national debt fell as a percentage of GDP.

However, during the 1960s and 1970s, the government began to run deficits continuously. The debt grew slowly and steadily, and by 1980 it was almost $1 trillion. By the beginning of 1993, it had exploded to $4 trillion. And, despite enactment of President Clinton's deficit reduction legislation in 1993, the debt will reach the $5 trillion level by the end of 1995. Since 1980, our debt has grown far more quickly than our economy. Today, the debt is a much greater percentage of GDP than it has been since the 1950s. The 1980s marked the first peace-time economic expansion during which the debt grew faster than the economy.

Who is to blame for amassing such debt in times of peace and relative prosperity, a debt that would have shamed our nation's founders? All of us. Presidents Reagan, Bush and Clinton, as well a secession of Congresses, resisted spending cuts and tax increases of the magnitude needed to balance the budget. And voters supported candidates of both parties who kept telling us what we wanted to hear instead of what we needed to hear.

TWO VISIONS OF THE FUTURE

WHAT HAPPENS IF WE DO NOTHING?

If we ignore our mounting debt, if we just wish it would go away and do nothing about it, it will grow and grow like a cancer that will eventually overwhelm our economy and our society. The interest we owe on the debt will skyrocket. We will continue our vicious

cycle of having to raise taxes, cut spending, and borrow more and more and more to pay interest upon interest. Our productivity growth will remain stagnant; more of our workers will have to settle for low-paying jobs; and our economy will continue its anemic growth. America will decline as a world power.

Sometime early in the next century, we will have to confront in the fundamental truth that low productivity and slow economic growth have failed to generate enough goods and services to satisfy all of our demands. Working people will be required to pay an ever larger share of their earnings to support a growing retired population and to pay the exploding interest on the debt that the older generation accumulated. Eventually, working people will refuse to submit to the crushing burden forced upon them by their elders. They will vote for leaders who will slash entitlement programs, even on the truly needy, rather than raise taxes still further. Millions of elderly people who thought that they could count on their retirement benefits will find that the resources are not there to meet their needs. There will be a generational conflict pitting American against American, child against parent, in a way that our nation has not seen before.

WHAT HAPPENS IF WE INSTEAD BALANCE THE BUDGET?

We could, on the other hand, do the right thing: we could refuse to let our leaders continually borrow and spend and borrow and spend; insist that they stop wasting our money and our children's money on programs that do not work and on entitlement payments for the well-off who do not need them; insist that what spending is done is paid for now, out of current taxation. If we do this, our deficits will disappear; our debt will shrink; our interest payments will become more and more manageable; our businesses will invest; our economy will renew its rapid growth of earlier years; and more of our people will find employment in higher-paying jobs. Our society will continue to flourish, and the American dream will be restored to our children and to our children's children.

DO WE HAVE TO START NOW?

Yes. Every year we delay deficit elimination, the problem gets worse. And every year we muddle through with halfway measures, we slip deeper into debt. Even a smaller deficit adds to our mounting national debt and pushes up interest payments.

Some argue that the economy is headed into recession and that this is the wrong time to launch a serious deficit reduction campaign. the same voices were heard opposing deficit reduction in 1993, when the economy was recovering from a severe recession, and opposing a serious run at the deficit in 1994 because an election was approaching. There will always be excuses for postponing the tough choices required to balance the budget. But until we get control over our deficits and our debt, we will not control our economic destiny.

Mr. SIMON. Then, they outline their principles for the deficit elimination.

Those principles strike me as being eminently sound. It is of no small significance that they do not ask for a tax cut.

Why both political parties are so enamored of a tax cut when we have this huge deficit simply defies all logic.

I ask to have printed in the RECORD their principles of deficit elimination at this point.

The material follows:

WHAT ARE OUR PRINCIPLES FOR DEFICIT ELIMINATION?

From the experience of past deficit reduction attempts, the views of our members, and the economic needs of the country, we have derived the following principles for deficit elimination:

1. Balance the budget by the year 2002, and aim for a surplus thereafter.
2. Distribute short-term sacrifice fairly and equitably among Americans of all ages and income groups, except for the very poor.
3. Enact policy changes right away, but phase them in gradually to accomplish steady deficit reduction while minimizing short-term economic dislocations.
4. Cut defense spending prudently, according to a realistic assessment of the military capability needed to counter threats to our national security today and in the foreseeable future.
5. Control entitlement growth.
6. Contain mounting health care costs.
7. Keep revenue increases to a minimum, but if revenues must rise, the increase should come from energy, luxury, and alcohol and tobacco taxes.
8. Enforce deficit elimination with credible mechanisms, including a balanced budget amendment to the Constitution.
9. Avoid gimmicks. Use conservative economic projections.
10. Attract and deserve broad public support with a sound, realistic deficit elimination plan.

Mr. SIMON. Finally, I simply want to commend the Concord Coalition, again, for a very constructive effort. I believe that their program is more solid than the one adopted and, particularly if combined with a balanced budget constitutional amendment, could really move our Nation in the direction that we ought to go.●

TRIBUTE TO THE ANTIOCHIAN ORTHODOX CHRISTIAN ARCHDIOCESE OF NORTH AMERICA

● Mr. ABRAHAM. Mr. President, I rise today with great pleasure and honor to extend my heartfelt congratulations to the Antiochian Orthodox Christian Archdiocese of North America, and the Most Reverend Metropolitan Philip Saliba, primate, in celebration of their 42d Antiochian Archdiocese Convention. As one of the three Orthodox Christian members of the U.S. Senate, it is a privilege for me to highlight this wonderful convention on the floor of the U.S. Senate.

The convention, held from July 24 through July 30, 1995 in Atlanta, GA, marks a biennial effort to bring together the almost six million Antiochian Orthodox Christians from all over this Nation. This year's convention deserves special praise since it marks the 100-year anniversary of the Antiochian Christian Orthodox Archdiocese in North America. The convention is an opportunity for Orthodox Christians to come together as a community and to provide one another with spiritual guidance and support.

Over the years the Orthodox faith has been a source of enormous strength for those of us who worship in this church. The spirit of community evident in the faith provides strength to its followers and serves as the foundation upon which a family can base its values.

I ask my colleagues to join me in saluting this extraordinary congregation and in extending to it our warmest congratulations.●

TRIBUTE TO THE ASSOCIATION FOR THE ADVANCEMENT OF THE BLIND AND RETARDED

● Mr. MOYNIHAN. Mr. President, I rise today to pay tribute to a most significant organization, the Association for the Advancement of the Blind and the Retarded [AABR].

Based in Jamaica, NY, the AABR is a private organization committed to enhancing the quality of life for our developmentally disabled citizens. For four decades they have been a leader in helping disabled individuals live a more fulfilling, dignified, and independent life. The AABR's professional and paraprofessional staff members are trained in the latest advances and methods of instruction for aiding adults and young adults with multiple handicaps.

Through the operation of intermediate care facilities and community residences, the AABR offers communal settings for young disabled adults to live, work and recreate together under the supervision of an expert staff. As well, the AABR operates day treatment centers, family services, recreation programs, a vacation retreat, and education programs throughout New York City. Their successes are truly inspirational.

AABR's significant accomplishments over the years have won the praise and support of the private sector. And on July 31 of this year the Metropolitan Club Managers Association [MCMA] of New York continues their support by hosting its 22d annual charity golf and tennis tournament and dinner dance to benefit AABR's handicapped youth. The encouragement and support provided by MCMA is indeed noteworthy and sets a glowing example for others to follow.

I ask my colleagues to join me in extending great good wishes for an enjoyable event and much continued success to AABR, MCMA, and all those involved in this most worthwhile cause.●

RICK URAY: FRIEND TO SOUTH CAROLINA BROADCASTERS

● Mr. HOLLINGS. Mr. President, let me take this opportunity to congratulate Prof. Richard Uray of the University of South Carolina College of Journalism and Mass Communication for being inducted last week into the South Carolina Broadcasting Association's Hall of Fame.

Rick's public induction signals what we've all known for a long time—that he is one of the most dedicated broadcasting professionals that South Carolina has ever had. We have known privately for years that he ranks up there

with the likes of John Rivers, Walter Brown, Henry Cauthen, Betty Roper, Joe Wilder, Bill Saunders, and Dick Laughridge, among others. Now, everyone in the State will know.

Rick Uray has been teaching and influencing the lives of broadcasters for more than 40 years. After receiving degrees from Kent State University and the University of Houston, he came to South Carolina during the year in which I was first elected to the Senate. That year, 1966, he became the chairman of the broadcasting sequence at the USC College of Journalism and began teaching the art of broadcasting to hundreds of South Carolina's best students. Also in 1966, Rick started a 30-year link with the South Carolina Broadcasting Association when he became the organization's executive manager.

Mr. President, as the leader of the SCBA, Rick Uray has been a testament to true professionalism. His calm dedication and energy made him a model for two generations of broadcasters. And while he'll retire from the university and SCBA at the end of the year, he'll leave a legacy that any college freshman should be proud to emulate.

Mr. President, I appreciate this opportunity to recognize the warmth, energy and lifelong commitment of Dr. Richard Uray. He is a true friend to South Carolina's broadcasting community. Let us wish him a happy retirement and many more years to come.●

HONORING THE 100TH BIRTHDAY OF FRANCES WILHELMINE GODEJOHN

● Mr. ASHCROFT. Mr. President, today I am pleased to honor a woman who has distinguished herself in her lifetime. Frances Wilhelmine Godejohn will celebrate her 100th birthday on July 26. Born and raised in St. Louis, MO, she comes from a colorful heritage and represents a wonderful example of someone who worked long and hard to support herself, living a life of honesty and probity. She is a devout Christian.

Frances Wilhelmine Godejohn was born in St. Louis, MO, on July 26, 1895. Her father, William Mathias Godejohn, was born in Washington, MO, in 1859. Prior to settling in St. Louis, he worked on a railroad construction project in New Mexico where he was shot by Indians, visited Yellowstone before it became a national park, and homesteaded in Montana. Her mother, Mary Elise Dallmeyer, was born in Gasconade County, MO. Both William and Mary's fathers were born in Germany.

Frances Godejohn completed the eighth grade in 1909, then went to Rubicam Business School, where she graduated in 1911. She began a career as a legal secretary that lasted until her retirement in 1972. Primarily, she worked for William H. Allen, first when he was an attorney, then when he served as a judge on the St. Louis Court of Appeals from 1915 to 1927, then again when he was a lawyer until his death in 1952.

Frances Godejohn worked in the corporate headquarters for Pevely Dairy from 1952 to 1960, when she formally retired. Not content in retirement, she resumed work as a legal secretary, first for David Campbell, until he died, and then for Edmund Albrecht. She finally retired in 1972, after breaking her leg while getting off the bus on her way to work.

Still spry and alert, Frances Godejohn regularly attends the Presbyterian Church, reads, follows the St. Louis Cardinals, corresponds with her many relatives and is a source of inspiration to all who know her.●

THE FORGOTTEN GENOCIDE

● Mr. SIMON. Mr. President, recently, I was pleased to note an article in the magazine, the Jerusalem Report, a magazine whose quality of reporting I have come to appreciate. The article concerns the Armenian genocide.

Titled ''The Forgotten Genocide,'' the article deals not only with the genocide but the delicate matter of relations between Israel and Turkey.

It is a frank but sensitive discussion of the problems that have been faced by a people who, in many ways, had an experience similar to the Jewish experience.

I am pleased The Jerusalem Report has published this article by Yossi Klein Halevi, and I hope it is the first of many steps to bring about a closer relationship between Israel and Armenia. I also add the strong hope that the relationship between Armenia and Turkey can improve because both countries can benefit from that improvement.

I ask that the article be printed in the RECORD.

The article follows:

THE FORGOTTEN GENOCIDE

(By Yossi Klein Halevi)

Every night at 10 o'clock, the massive iron doors of the walled Armenian compound in Jerusalem's Old City are shut. Any of the compound's 1,000 residents who plan to return home from the outside world past that time must get permission from the priest on duty. The nightly ritual of self-incarceration is in deference to the monastery, located in the midst of the compound's maze of low arched passageways and stone apartments with barred windows.

Yet the seclusion is also symbolically appropriate: Jerusalem's Armenians are consecrated to historical memory, sealed off in a hidden wound. Every year, on April 24—the date commemorating the systematic Turkish slaughter in 1915 of 1.5 million Armenians, over a third of the total Armenian nation, many of them drowned, beheaded, or starved on desert death marches—the trauma is publicly released, only to disappear again behind the compound's iron doors.

The genocide remains the emotional centerpoint of the ''Armenian village,'' as residents call the compound. In its combined elementary and high school hang photos of 1915: Turkish soldiers posing beside severed heads, starving children with swollen stomachs. On another wall are drawings of ancient Armenian warriors slashing enemies, the compensatory fantasies of a defeated people.

While elders invoke the trauma with more visible passion, young people seem no less possessed. ''There is a sadness with me always,'' says George Kavorkian, a Hebrew University economics student.

In a large room with vaulted ceilings and walls stained by dampness, 89-year-old Sarkis Vartanian assembles old-fashioned pieces of metal type, from which he prints Armenian-language calendars on a hand press. Vartanian is one of Jerusalem's last survivors of the genocide. Though the community has a modern press, it continues to maintain his archaic shop, so that he can remain productive.

Vartanian tells his story without visible emotion. In 1915, he was living in a Greek-sponsored orphanage in eastern Turkey. Police would come every day and ask who among the children wanted to go for a boat ride. Vartanian noticed that none of those who'd gone ever returned. One day, strolling on the beach, he saw bodies. He fled the country, and made his way with a relative to Jerusalem, joining its centuries-old Armenian community.

When he finishes speaking of 1915, he relates some humorous details of his life, a man seemingly at peace with his past. But suddenly, without warning, he begins to sob. For minutes he stands bent with grief. Then, just as abruptly, he turns to the dusty boxes of black metal letters and carefully assembles a line of type.

Even more than grief, Armenians today are driven by grievance: outrage at Turkey's refusal to admit its crime, let alone offer compensation. Though there has been some international recognition of the genocide, a vigorous Turkish public-relations campaign claiming the genocide is a myth has created doubts. The Turks insist that the numbers of Armenian dead have been exaggerated, that no organized slaughter occurred, and that those who did die perished from wartime hardships—the very arguments used by Holocaust ''revisionists,'' notes Dr. Ya'ir Oron, author of a just-published book tracing Israeli attitudes to the Armenian genocide.

Perhaps the most forceful rebuttal to Turkish denial came from the former U.S. ambassador to Turkey, Henry Morgenthau, an eyewitness to the massacres, who wrote in 1917: ''The whole history of the human race contains no such horrible episode as this.'' Despite the overwhelming number of similar eyewitness testimonies, the Armenians must continually prove that their mourning is justified.

Many of Israel's 4,000 Armenians—who live in Haifa and Jaffa as well as in parts of the Old City's Armenian Quarter just outside the monastery compound—feel an almost pathetic gratitude to those Jews who acknowledge them as fellow sufferers. One afternoon, George Hintlian, an Armenian cultural historian, took me to the obelisk memorial in Mt. Zion's Armenian cemetery. I laid a small stone on the memorial, the Jewish sign of respect for the dead. ''Thank you,'' said Hintlian with emotion, as though I'd performed some unusual act of kindess.

While historians attribute the genocide to Turkish fears of Armenian secession from the Ottoman empire, Armenians themselves say the Turks were jealous of their commercial and intellectual success. We're just like the Jews, they say. Indeed, Armenians see the Jewish experience as a natural context for their own self-understanding. They envy the recognition our suffering has earned; they even envy us for having been killed by Germans who, unlike Turks, have at least admitted their crimes and offered compensation.

Like the Jews, say Armenians, they too are a people whose national identity is bound

up with religion, whose members are scattered in a vast Diaspora and whose homeland—politically independent since 1991 but economically dependent on neighboring Turkey—is surrounded by hostile Muslim states. And while some Armenians sympathize with the Palestinians, others privately concede their fear of Muslim fundamentalism.

But for all their affinity with the Jews, Armenians are deeply wounded by Israel's refusal to recognize the genocide—a result, says Oron, of Turkish pressure. Israel looks to Turkey as an ally against Muslim extremism, and owes it a debt for allowing Syrian Jews to escape across its territory in the 1980s. And so no government wreath has ever been laid at the Mt. Zion memorial. And Israel TV has repeatedly banned a documentary film about the Armenians, ''Passage to Ararat.''

Though there are cracks in the government's silence—on the 80th anniversary of the massacre this past April 24, for example, Absorption Minister Yair Tsaban joined an Armenian demonstration at the Prime Minister's Office—the ambivalence persists. Last year, the Education Ministry commissioned Oron to write a high school curriculum on the Armenian and Gypsy genocides. But then, only two weeks before the curriculum was to be experimentally implemented, the ministry abruptly backtracked. A ministry-appointed commission of historians (none of them Armenian experts) claimed that Oron's textbook contained factual errors about the Gypsies and didn't present the Turkish perspective on the Armenians. A spokesman for the ministry says a new textbook will be commissioned.

While Oron is careful to avoid accusing the ministry of political motives. Armenians are far less reticent. Says Hintlian: ''Obviously there is Turkish pressure. If the Turks get away with their lie, it will strengthen the Holocaust deniers, who will see that if you are persistent enough a large part of humanity will believe you.''

So long as the Turks claim the genocide never happened, the Armenians will likely remain riveted to their trauma.

Bishop Guregh Kapikian is principal of the Armenian school. When he speaks of 1915 his head thrusts forward, voice quivering. His cheeks are hollowed, his chin ends in a white-goateed point—a face gnawed by grief and sharpened by rage.

Kapikian, born in Jerusalem, was 3 when his father, a historian, died of pneumonia, having been weakened from the death march he'd survived. Kapikian eventually become a priest—''to be a soldier of the spirit of the Armenian nation.''

Are you concerned, I ask, that your students may learn to hate Turks?

''The Turks have created hatred. Our enemy is the whole Turkish people.''

But didn't some Turks help Armenians?

''They weren't real Turks. Maybe they were originally Christian, Armenian.''

If Turkey should someday admit its crimes, could you forgive them?

''They can't do that. They're not human. What can you expect from wild beasts?''

There are other Armenian voices.

George Sandrouni, 31, runs a ceramics shop outside the compound. He sells urns painted with clusters of grapes, tiles with horsemen and peacocks, chess boards garlanded with pale blue flowers.

As a boy, he feared everyone he knew would disappear. The son of a man who survived the genocide as an infant, Sandrouni grew up with no close relatives, all of whom were killed in 1915. He resolved that when he married he would have 20 children, to fill the world with Armenians.

Now expecting his first child, he has become ''more realistic, less paranoid.'' He says: ''The Turks have to be educated about the genocide. But we also have to learn how to deal with our past. I won't teach my children about the genocide as something abstract, like mathematics. I'll teach them that other people suffer; that some Turks helped Armenians; that evil is never with the majority. I'll try to keep the horror from poisoning their souls.''●

CBO ESTIMATES ON INSULAR DEVELOPMENT ACT

● Mr. MURKOWSKI. Mr. President, on June 30, 1995, I filed Report 104–101 to accompany S. 638, the Insular Development Act of 1995, that had been ordered favorably reported on June 28, 1995. At the time the report was filed, the estimates by Congressional Budget Office were not available. The estimate is now available and concludes that enactment is now available and concludes that enactment of S. 638 would result in no significant cost to the Federal Government and in no cost to State or local governments and would not affect direct spending or receipts. I ask that the text of the CBO estimate be printed in the RECORD.

The text follows:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, DC, July 11, 1995.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 638, the Insular Development Act of 1995, as reported by the Committee on Energy and Natural Resources on June 30, 1995. CBO estimates that S. 638 would result in no significant cost to the federal government and in no cost to state or local governments. Enacting S. 638 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

S. 638 would restructure as agreement for making payments to the Commonwealth of the Northern Mariana Islands (CNMI). Presently, the federal government is obligated to make annual payments of $27.7 million to CNMI. S. 638 would maintain that funding commitment but would expand the purposes for which those funds could be spent. Based on a 1992 agreement reached between CNMI and the federal government, CNMI would receive a declining portion of those funds for infrastructure development through fiscal year 2000. The remaining funds would be used for capital infrastructure projects in American Samoa in 1996 and in all insular areas in 1997 and thereafter. (Insular areas include Guam, the Virgin Islands, American Samoa, CNMI, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.) Of the funds designated for 1997 and thereafter, $3 million would be designated for the College of the Northern Marianas in 1997 only, and $3 million would be allocated each year to the Department of the Interior (DOI) for either federal or CNMI use in the areas of immigration, labor, and law enforcement. Additionally, beginning in fiscal year 1997, DOI would be required to prepare and update annually a five-year capital infrastructure plan for insular projects.

CBO estimates that the reallocation of funds that would occur under this bill would have little, if any, effect on the rates at which such funds are spent. CBO has no reason to expect that infrastructure funds used by other insular areas would be spent at a rate different from those used by CNMI. Also, based on information provided by the DOI, CBO estimates that the bill's capital infrastructure planning requirement would result in no significant cost to the federal government.

S. 638 also would gradually apply the minimum wage provisions of the Fair Labor Standards Act (FLSA) to CNMI, which would require enforcement activity by the Department of Labor (DOL). The department expects that it would continue to receive annually $800,000 of the CNMI funds allocated to DOI for immigration, labor, and law enforcement purposes. DOL uses these funds to train CNMI officials to enforce labor laws, while providing additional temporary enforcement assistance. Based on information from the DOL, CBO expects that DOL would continue to receive these funds under this bill and that they would be sufficient to conduct FLSA enforcement. Therefore, we estimate that no additional costs to the federal government would result from this provision.

Additionally, S. 638 would require that DOI continue to submit annually to the Congress a report on the ''State of the Islands,'' as well as a report on immigration, labor, and law enforcement issues in CNMI. The bill also would make several clarifications to existing law and would require cooperation in immigration matters between CNMI and the Immigration and Naturalization Service. CBO estimates that these provisions would result in no significant cost to the federal government.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is John R. Righter, who can be reached at 226–2860.

Sincerely,

JUNE E. O'NEILL,
Director.●

ALBUQUERQUE TECHNICAL-VOCATIONAL INSTITUTE

● Mr. BINGAMAN. Mr. President, I rise today to recognize Albuquerque Technical-Vocational Institute, a community college in New Mexico that is celebrating its 30th year of service to the community.

T-VI's impressive growth has paralleled the expansion of the community it has served for 30 years. From its origins with 150 students in an old abandoned elementary school, Albuquerque Technical-Vocational Institute has matured to become New Mexico's second largest higher educational institution with 20,000 students at three campuses, and an additional satellite campus planned in Bernalillo County's South Valley.

The development of Albuquerque's silicon mesa and high-tech economic expansion would have been impossible without the high-tech training provided at T-VI. T-VI wisely seeks out the counsel of the business community to ensure that its programs and training facilities are state-of-the-art. T-VI is a leader in technical education in New Mexico, placing its graduates in working environments that have helped to expand the state's economy and enrich the community.

In a community noted for its cultural diversity, T-VI has become a model of educational advancement. T-VI graduates are at work in a variety of technical careers, trades and professions throughout New Mexico. They provide

needed technical assistance and services to a variety of industries including our National Labs.

Mr. President, for its outstanding accomplishments, I would like to commend the students, teachers and administration of the Albuquerque Technical-Vocational Institute for 30 years of service to the community and to the State of New Mexico.●

JOYCE FOUNDATION PRESIDENT SPEECH TO LEAGUE OF WOMEN VOTERS

● Mr. SIMON. Mr. President, a longtime friend of mine, Lawrence Hansen, vice president of the Joyce Foundation, sent me a copy of a speech made by Deborah Leff, the president of the Joyce Foundation, on the occasion of the 75th anniversary of the League of Women Voters of the State of Illinois.

The subject of her address is campaign financing.

It contains material that would be startling to most citizens though, unfortunately, not startling to those of us who serve in the Senate.

While the bulk of her remarks are about campaign financing, I want to quote one item that is not. She says:

I am saddened by the media's increasing tendency to exploit, entertain and titillate, leaving us less informed about public affairs and more cynical about politics.

She announces that the Joyce Foundation will make a 3-year, $2.3 million special study on money and politics.

While the emphasis of her project will be the State of Illinois, clearly she draws lessons from what has happened at the national level, and we should draw lessons beyond the State of Illinois.

For example, she says:

In 1976, the average cost of winning a seat in the U.S. House of Representatives was less than $80,000. Last year, it leveled off at $525,000. Between 1990 and 1992 alone, the cost of winning a House seat jumped by 33 percent. In fact, 45 House candidates in 1994 spent over $1 million each.

On PACs, Ms. Leff says:

To understand the competitive effects of the current campaign finance system, consider the giving habits of political action committees—PACs. Last year, PACs distributed close to $142 million to House candidates, three-quarters of which went to incumbents. To appreciate the enormity of this bias, it's worth noting that the winning candidates last year raised more money from PACs than their challengers generated from all sources, including from PACs, individual contributors, their own donations and loans.

She is concerned, as we should be concerned, the present system of financing campaign makes our political institutions unrepresentative. She observes:

The skewed distribution of political money is not just a problem for challengers. There's another—and some would argue more pernicious—side to this imbalance. The campaign finance system favors wealthy candidates over poor candidates, male candidates over female candidates, and white candidates over African-American and Latino candidates. And this bias continues to be reflected in the composition of many legislative bodies.

Although less than one-half of one percent of the American people are millionaires, there are today at least 72 millionaires in the U.S. House of Representatives and 29 in the U.S. Senate. (And these figures don't include Michael Huffington, who spent $5 million of his own money to win a House seat in 1992 and an additional $28 million last year in his failed bid to become a Senator.) There is something terribly wrong when millionaires are over-represented in the ''People's House'' by a factor of 3,000 percent and in the Senate by a factor of more than 5,000 percent.

The president of the Joyce Foundation also notes something every one of us knows to be the fact:

Candidates' increased reliance on television ads has led to less informative and more mean-spirited campaigns. We are told that attack ads work; they must, because why else would candidates invest so much money in this stuff? But who really benefits and at what cost to the political system? The public is fed slivers of information, often deceptively presented. Real issues are not discussed. The most obvious victim, of course, is a political tradition that once prided itself in allowing serious candidates to debate serious issues in a serious way.

Then, she says something that I do not know to be a fact, but, as far as I know, it is accurate. She tells her audience:

The United States is the only major democracy that neither restricts the amount of money candidates can spend on broadcast advertising nor regulates their access to and use of this powerful medium. As a result, the quality of the nation's political discourse has declined sharply. And so, too, has the public's confidence in the veracity and judgment of our leaders.

A minor correction I would make to her speech is that she refers to $100 million being spent to defeat health care. Newsweek magazine uses the figure $400 million, and I believe that Newsweek magazine is correct.

She also notes:

In 1992, half of all the money raised by congressional candidates—$335 million—was provided by one-third of 1 percent of the American people.

Deborah Leff has a number of illustrations of the abuses. They include references to my friend, the former speaker of the Illinois House, Michael Madigan, and the current speaker of the Illinois House, Lee Daniels. What Michael Madigan and Lee Daniels are doing is using the present system. I do not fault them for that. But what Ms. Leff is saying is that the system should be changed, and I agree with her.

She does not call for any specific program of change.

My own belief is that at the Federal level, we have to have dramatic change, and it will not come about without the President of the United States really pushing for change. The system I would like to have is a check-off contribution of $3 or $5 on our income tax that would go to major candidates for the Senate and the House, and no other money could be spent. Then, in a State like Illinois, instead of spending $8 million or $10 million on a campaign, the candidates could spend $2 million, and have some required free time made available by radio and televisions, not for 30-second spots, but for statements of up to five minutes by the candidates in which there is a serious discussion of the issues.

I ask that the full Deborah Leff speech be printed in the RECORD, and I urge my colleagues of both parties and their staffs to read the Deborah Leff speech.

The material follows:

SPEECH OF DEBORAH LEFF, PRESIDENT, THE JOYCE FOUNDATION AT THE 75TH ANNIVERSARY CONVENTION OF THE LEAGUE OF WOMEN VOTERS OF ILLINOIS—JUNE 2, 1995

INTRODUCTION

I am delighted to be here this evening and to play a small role in celebrating the 75th anniversary of the founding of the League of Women Voters. No organization in this century has contributed more to expanding informed citizen participation in the political process and can legitimately claim more victories for democracy than the league. Yours is a proud legacy, and I salute you.

Through the years the Joyce Foundation has frequently partnered with the league. We have labored together to simplify the Nation's voter registration laws—and despite some unseemly footdragging here in the land of Lincoln and several other States, we have made real progress. I read in the newspaper a few weeks ago that in the few months since the Motor Voter Act was put into effect early this year, two million new voters have been registered. Two million. It's a wonderful number. And you should be very proud.

Joyce also stood with the league in its efforts to institutionalize presidential debates, and happily that has occurred.

Two years ago, we supported the ''wired for democracy'' project. This collaborative effort, involving the national league and a number of State and local chapters, has been exploring ways of making greater use of communication technologies to meet the informational needs of citizens.

And last year we joined forces with you in an ambitious experiment to make the Illinois gubernatorial race more issue-oriented. The goal was to enable the people of Illinois to identify their major policy concerns, frame an issues agenda, and engage the candidates for Governor in a conversation about their visions and plans for the State's future. That the candidates took less notice of these citizens' messages than they should have only confirms how desperately we need new and inventive ways for reconnecting people and their elected representatives. The ''Illinois voter project'' was a valiant and useful attempt to bridge that gulf, and Joyce was glad to play a part.

A CRISIS OF CONFIDENCE

Will Rogers once wrote, ''I don't make jokes, I just watch the government and report the facts.'' And although we have much to celebrate tonight, there are a lot of facts to report. And, unfortunately, they're not funny. A terrible malaise has settled over our democracy. The fact is millions of our fellow citizens are fed up with politics. They feel left out, disconnected, unheard, unappreciated and powerless. And in frustration and anger, they are abandoning the system in droves. The signs of discontent are myriad. I'll mention only a few:

Three our of four Americans today say they ''trust government in Washington'' only ''some of the time'' or ''almost never.'' In the mid-1960s, only 30 percent—rather than 75 percent—of Americans felt that way. (Roper Organization)

Nearly 60 percent of us believe that ''the people running the country don't really care what happens to us.'' (Louis Harris)

Public approval of Congress almost reached rock bottom in 1994.

The Roper organization reports that millions of citizens have withdrawn from community affairs over the last 20 years. In 1973 one in four American adults said they attended a public meeting on community or school business during the year. Two years ago, only 13 percent of us claimed we had attended such forums.

And from a relatively high point in the early 1960s, voter turnout in national elections has declined by nearly a quarter. In State and local elections, the trends are even worse. Only 37 percent of Chicago's voters bothered to participate in February's mayoral and aldermanic primary election; and just over 40 percent went to the polls in April's general election, marketing the lowest turnout in a city election in more than a half century.

I wish I could report that these discontents were traceable to a single cause, to some easily identified and manageable condition. But clearly, as everybody in this room recognizes, that is not the case.

We know, for example, that economic anxieties are taking a toll on our civic life. Millions of Americans have grown pessimistic about getting ahead in a rapidly changing economy. Many are struggling just to stay even, and they blame government for their plight.

We know that the breakdown of traditional institutions, like families and schools, and an accompanying rise in social pathologies have deepened the public's despair about the political system.

We know that civic education is in a deplorable state and that the ranks of those voluntary organizations that have traditionally and energetically labored over the years to fill this vacuum are today greatly depleted.

As some of you know, I worked for the news media for years. I respect the news media, and I often admire it. But I am saddened by the media's increasing tendency to exploit, entertain and titillate, leaving us less informed about public affairs and more cynical about politics.

We know that technology, television, and talk radio can reinforce our isolation and exacerbate social divisions rather than fostering the cooperative, tolerant, and generous spirit which a democracy requires.

And then there's the issue of money in politics—an old and spirited demon with which both the league and the Joyce Foundation have done battle off and on over the years. As Senator Bill Bradley recently noted,

''Make no mistake, money talks in American politics today as never before. No revival of our democratic culture can occur until citizens feel that their participation is more meaningful than the money lavished by pacs and big donors.''

The fundamental problem, Bradley says, is that ''the rich have a loudspeaker and everyone else gets by with a megaphone.'' And, of course, he's absolutely right. The Joyce Foundation believes that overhauling the campaign finance system is as urgent a piece of unfinished business on the Nation's crowded policy agenda as any other.

You know, Eleanor Roosevelt once wrote, ''I think if the people of this country can be reached with the truth, their judgment will be in favor of the many, instead of the privileged few.'' We want a Government for the many, a Government where the concerns of the citizenry are respected and addressed. And for that reason, the Joyce Foundation decided last year to launch a 3-year, $2.3 million special project on money and politics.

Campaign finance reform is not a sexy issue. It doesn't get enough attention from the media, and it doesn't get enough attention from foundations. But I want, in my remaining time with you, to talk about why this problem is so critical to the future of America, and why it must be taken on.

THE PROBLEM

As you know, the financing of political campaigns is governed by a patchwork of laws and regulations. Federal candidates operate under one set of rules; State and local candidates under others. The variations among jurisdictions are endless, but these systems have one thing in common: they don't work very well. Let me briefly discuss their most obvious deficiences, leaving to last what I regard as the most compelling argument for reform.

Problem 1: The current system has allowed campaign costs to rise to prohibitive levels

The cost of running for public office has skyrocketed over the past 20 years, especially at the Federal and State levels. Few campaign finance laws make any effort to restrain spending.

In 1976, the average cost of winning a seat in the U.S. House of Representatives was less than $80,000. Last year, it leveled off at $525,000. Between 1990 and 1992 alone, the cost of winning a House seat jumped by 33 percent. In fact, 45 House candidates in 1994 spent over $1 million each.

The same pattern can be seen here in Illinois. Five State Senate candidates spent more than $500,000 each in their 1992 campaigns. The 20 most expensive Senate races that year cost over $5 million.

These trends have had three effects. First, they have rendered public service unaffordable for a growing number of qualified citizens of ordinary means.

Second, the escalating costs of campaigns are making it easier for wealthy and well-connected citizens to win public office.

And third, those willing to pay the price of admission find themselves spending more time begging than meeting voters, doing their policy homework, and governing.

Problem 2: Under the current campaign finance system, money, more than any other factor, determines who wins and loses elections

As a general rule, candidates who raise and spend the most almost always win. Cash—not the qualifications, character and policy views of candidates—has increasingly become the currency of democracy.

In last year's election, House incumbents on average outspent their opponents by nearly 3-to-1 ($572,388 vs. $206,663), and despite the public's anger with Congress and a higher than usual turnover in the House, 90 percent of the incumbents survived. In fact, 72 percent of House incumbents running in last fall's election outraised their challengers by $200,000 or more, and 23 percent outdistanced their opponents by at least $500,000. If a challenger did not spend at least $250,000—and fewer than one-third of last year's challengers reached that threshold, his or her chances of winning were only one in a hundred.

Problem 3: The current campaign finance system has made elections less competitive

The current rules tilt so heavily in favor of incumbent officeholders that most challengers cannot hope to win. As a result, large numbers of elections that should be competitive rarely are.

In 1994, less than one in three congressional races were financially competitive. In fact, four out of five House incumbents faced challengers with so little money—typically less than 50 percent of the amount available to the incumbent—that they did not pose a serious threat.

To understand the competitive effects of the current campaign finance system, consider the giving habits of political action committees—PAC's. Last year, PAC's distributed close to $142 million to House candidates, three-quarters of which went to incumbents. To appreciate the enormity of this bias, it's worth noting that the winning candidates last year raised more money from PAC's than their challengers generated from all sources, including from PAC's, individual contributors, their own donations and loans.

The real losers, of course, are voters. As elections become less competitive and as the range of candidate and policy decisions voters must make narrows, there is less and less reason to go to the polls. Under the circumstances people cannot be entirely blamed for staying away.

Problem 4: Because of the campaign finance system's inherent biases, many of our representative institutions remain terribly unrepresentative.

The skewed distribution of political money is not just a problem for challengers. There's another—and some would argue more pernicious—side to this imbalance. The campaign finance system favors wealthy candidates over poor candidates, male candidates over female candidates, and white candidates over African-American and Latino candidates. And this bias continues to be reflected in the composition of many legislative bodies.

Although less than one-half of one percent of the American people are millionaires, there are today at least 72 millionaires in the U.S. House of Representatives and 29 in the U.S. Senate. (And these figures don't include Michael Huffington, who spent $5 million of his own money to win a House seat in 1992 and an additional $28 million last year in his failed bid to become a Senator.) There is something terribly wrong when millionaires are over-represented in the ''people's house'' by a factor of 3,000 percent and in the Senate by a factor of more than 5,000 percent.

When 64 House and Senate candidates can reach into their own pockets and give their campaigns a $100,000 shot in the arm, as occurred last year, it takes your breath away. Twelve of these candidates, let me add, invested more than $1 million each in their campaigns.

These financial disparities are not limited to just rich and poor candidates. In 1991, white candidates for the Chicago city council raised five times more money than African-American candidates and one and a half times more than Latino condidates. If African-Americans had to run regularly against white or Latino candidates in racially and ethnically mixed wards, they would likely operate at a severe financial disadvantage. And given the importance of money, their chances of being elected from such wards would at best be problematic.

As I am sure you know, never in the long history of this city has an African-American represented a predominantly white ward. And were it not for the voting rights act which has helped to mitigate the financial disadvantages experienced by minority candidates, the city council would almost certainly be less representative of Chicago's diversity than it is today.

Problem 5: The current campaign finance system has made legislators and candidates too financially dependent on a small number of legislative leaders.

The past decade has witnessed a proliferation of political action committees established and controlled by Federal and State legislative leaders. These entities, which attract enormous amounts of special interest money, provide an alternative way of getting

money to favored candidates. However, these conduits—which are perfectly legal—also allow leaders to solidify their positions within their party caucuses, exercise greater control over members and increase their influence over a range of legislative matters.

This trend has not only accelerated the decline of political parties but has led to an unhealthy financial dependence by many rank and file legislators on their leaders and, according to some experts, to a dimunition of their independence. There was a time, of course, when leaders earned the loyalty of their followers; today, loyalty is increasingly a purchasable commodity. That is not a good development.

In 1994, Federal leadership PACS distributed more than $3.6 million to congressional candidates. But what has occurred in Illinois makes the growth and reach of Federal leadership PACS look trivial in comparison. Last year, Michael Madigan, then the speaker of the Illinois house, controlled a $5.3 million war chest, and his Republican counterpart, Lee Daniels, the current speaker, had $2.5 million at his disposal. Much of this nearly $8 million was directed to candidates in 23 pivotal legislative races in which the candidates on their own had already raised $4.5 million

Although I have not seen a detailed analysis of how these leadership funds were distributed last year, I can tell you what occurred in 1992. The Democratic House candidates running in 21 targeted races that year received on average $81,000 from the Madigan fund. Of all the money spent by those candidates, nearly 60 percent came from this single source. It is not hard to believe that those Democrats who won feel a special debt of gratitude for the speakers generosity.

Problem 6: The current campaign finance system has coarsened the political dialogue in this country

Costly broadcast advertising has driven up campaign costs. But that is not the only problem. Candidates' increased reliance on television ads has led to less informative and more mean-spirited campaigns. We are told that attack ads work; they must, because why else would candidates invest so much money in this stuff? But who really benefits and at what cost to the political system? The public is fed slivers of information, often deceptively presented. Real issues are not discussed. The most obvious victim, of course, is a political tradition that once prided itself in allowing serious candidates to debate serious issues in a serious way.

The United States is the only major democracy that neither restricts the amount of money candidates can spend on broadcast advertising nor regulates their access to and use of this powerful medium. As a result, the quality of the Nation's political discourse has declined sharply. And so, too, has the public's confidence in the veracity and judgment of our leaders.

Problem 7: The campaign finance system has driven people out of the electoral process and reduced their role to voting on election day

The last 30 years have witnessed what can only be described as a hostile take-over of the election process by highly paid and often unaccountable professional operatives. The campaign finance system has spawned an industry of pollsters, ad producers, time-buyers, professional fundraisers, direct-mail specialists and spin-doctors. Their exorbitant demands on campaign resources require that ever increasing amounts of money be raised. It is a trend that leaves little room in campaigns for the citizen-volunteers who were once the backbone of most campaigns. The ascendancy of political consultants has robbed our politics of the fun, hoopla, and sadly, much of the substance once commonly associated with campaigns.

Problem 8: The campaign finance system all too often elevates or appears to elevate private interests over the public interest

Of all the system's shortcomings, this by far is the most serious. When citizens on a large scale harbor suspicions about the fairness and integrity of policymaking and regulatory processes, as is clearly the case today, it casts doubts on the legitimacy of the political system itself.

VIGNETTES

Hardly a week passes without some news report about how special interest money is being used to skew policy priorities, shape legislation and influence regulatory decisions. Elected officials may find the suggestion offensive, but a growing number of Americans are convinced that those who pay the piper also call the tune. Let me give you some examples.

Tort Reform. When Illinois State legislators on one side of the tort reform debate accept nearly $2 million in campaign contributions as well as business contracts from the Illinois State Medical Society, and lawmakers on the other side accept nearly half a million dollars from the Illinois Trial Lawyers Association and tens of thousands of dollars from individual members, what are we to think? Would it be unfair to conclude that the public interest may not have been the paramount consideration in this debate? I don't think so.

Clean Water. In 1994, 273 PACs associated with industries bent on weakening the Clean Water Act contributed nearly $8 million to Members of the U.S. House Representatives. Those serving on the committee with jurisdiction over the bill alone received $1.2 million. So far, the industries' efforts appear to be paying off. Water quality standards have been rolled back. As a foundation committed to cleaning up the Great Lakes, we are all too aware that money talks . . . and it may speak loudly enough to drown out 25 years of progress on environmental issues.

Pesticides. The environmental working group—one of our foundation's grantees—issued a report late last year showing that sponsors of legislation designed to weaken Federal pesticide laws received $3.1 million in contributions from 44 industry-supported PACs. This represented nearly a 100-percent increase over donations made during a comparable period two years earlier. What accounted for this sudden spurt of generosity? Industry was reacting to a Federal court decision that threatened to ban dozens of cancer-causing pesticides. In the end the pesticide industry got largely what it wanted. Whether the Americans people won is another matter altogether, money talks.

Guns. Last year the National Rifle Association poured $3 million into the campaigns of Congressional candidates who support that organization's agenda—an agenda, I might add, which is at odds with the majority of the American people. The NRA targeted for defeat four Members who had voted in favor of last year's assault weapons ban. Three, including Speaker Tom Foley, lost.

More recently Speaker Gingrich appointed a task force to review current Federal laws pertaining to guns, including the Brady bill and the assault weapons ban. All six Members appointed by the speaker are outspoken opponents of gun control, and four received significant NRA financial support during the last election. Will this panel give people who want to quell the epidemic of gun violence a chance to be heard? And if it does, will it listen to what they, and so many others have to say? Or will they be—if you'll excuse the expression—shot down by the influence of money?

State Contracts. In fiscal year 1992, the State of Illinois contracted with businesses and individuals for $4.6 billion worth of goods and services. A third of those contracts—$1.6 billion—were awarded to campaign contributors of statewide candidates. And about $437 million in State business went to contributors on a non-bid basis. According to the Illinois State-Journal, the dollar amount of the non-bid contracts awarded contributors was six times greater than the value of the contracts awarded non-contributors. For the more enterprising among us, I think there's a message here. Money talks.

Health Care. Despite solemn promises from nearly all quarters, the American people didn't get health care reform last year. In the end, reform was swallowed up in a sea of dollars.

I doubt we will never know how much money was at play. It is conservatively estimated that in 1993 and 1994 the medical professions, insurance industry, pharmaceutical companies and an assortment of business interests spent $100 million to influence the outcome of the health care debate.

There are some things, thanks to disclosure, that we do know. For example, we know that during the last election cycle health care-related industries poured at least $25 million into the campaign coffers of Members of Congress. One-third of that largesse was directed to Members serving on the five House and Senate committees with jurisdiction over health care issues.

We know that in 1992 and 1993 at least 85 Members availed themselves of 181 all-expense paid trips sponsored by health care industries—trips designed to help Members learn about health care in out-of-the-way places where distractions could be kept to a minimum. Places like Paris, Montego Bay, and Puerto Rico.

We also know that health care interests hired nearly 100 law, public relations and lobbying firms to do their bidding at both ends of Pennsylvania Avenue—and that these firms in turn brought 80 or so former high-ranking Federal officials on board, including recently retired Members of Congress, to give their efforts greater authority.

We know that the health insurance association of America spent millions to produce and air its ''Harry and Louise'' ads—a strategy that almost single-handedly led to a 20-point drop in public approval of the Clinton proposal.

We know that the tobacco industry spent millions more to scuttle a proposed $2 tax on cigarettes, the revenue from which would have helped finance a new health care system.

We know that the national federation of independent businesses spent even more to kill a mandatory employer tax designed to help pay for universal health care coverage.

We are told that all the pushing and shoving by competing interests around health care reform was a textbook demonstration of democracy at work. We may not like the results, we are told, but this is how a democracy functions and should function.

This is not how a democracy functions. The analysis overlooks one critically important fact. The interests of those with the largest stake in reform—the 39 million Americans without health insurance, the 80 million with pre-existing medical conditions, and the 120 million with lifetime limits on their health insurance policies—were grossly underrepresented. Those most in need of help didn't have an army of lobbyists on capitol hill, couldn't afford television ads, and were in no position to contribute millions of dollars to Members of Congress. On every front, they were heavily outgunned.

When the definitive history of this episode is written, one conclusion will be impossible

to avoid: in the great debate over health care reform, money didn't just talk, it roared.

CASH CONSTITUENTS

Defenders of the current system are quick to point out that suspected overreaching is not proof of official wrongdoing. They are right. But the absence of indictable offenses is a flimsy defense for practices that bring about widespread distrust of the political system.

In the final analysis, what counts is what people believe, and most people believe they are being shortchanged by a system which puts them into one of two classes: cash constituents or non-cash constituents. Cash constituents have regular access to elected officials; non-cash constituents don't. Cash constituents are willing to pay to play; non-cash constituents can't afford to.

If you remember no other statistic I cite tonight, let me offer one that's worth storing away for future reference. In 1992, half of all the money raised by congressional candidates—$335 million—was provided by one-third of 1 percent of the American people.

Unbelievably, things could get worse. For example, in the name of deficit reduction, Senate Republicans recently tried to scrap the public finance system for presidential candidates—arguably, the most important and durable reform coming out of the Watergate era. The effort was narrowly beaten back.

Congress has already passed legislation that would significantly reduce the budget of the Federal Election Commission. Unless President Clinton vetoes this bill, the agency's ability to ensure financial disclosure by political candidates and committees will be severely crippled. In an unusually blunt letter to Members of Congress, the commission's chairman recently warned that a deep cut could lead ''the public, fairly or not, to suspect that Congress is punishing the agency for doing its job.''

Now, if these developments were not enough for one season, G. Gordon Liddy, the former Nixon aide and mastermind of the Watergate break-in 23 years ago, has just been honored with the freedom of speech award by the national association of talk show hosts. It's enough to make you question the Bible's assurances about the meek inheriting the earth.

THE FOUNDATION'S APPROACH

In the face of all these problems, what is the Joyce Foundation's strategy? Our goal is to make the issue of campaign finance a more prominent part of the public policy agenda. And we are seeking to do that through projects emphasizing expanded news media coverage, public education, fresh analyses of campaign finance practices and improved disclosure and regulation. Through the work of our grantees, we hope to create incentives that will help persuade lawmakers to face up to and finally meet their responsibilities.

I should quickly add that the foundation is not promoting any particular reform approach. But we believe that reform, if it is worthy of that name, must at a minimum control the costs of campaigns, increase political competition, encourage voting and restore the public's confidence in the fairness of elections and in the integrity of the policymaking process. Two foundation-supported projects designed to move us in these directions deserve mention tonight.

The Illinois Project. Twenty years have elapsed since Illinois last overhauled its campaign finance system. It is time to do it again. Here is a system in which the only limits are the sky itself. In Illinois, there are: no limits on the amount of campaign money candidates can raise; no limits on the sources of campaign contributions; no limits on the amount of money candidates can spend; no limits on the size of contributions individual and institutional donors can make; no limits on the vast war chests candidates can accumulate and carry over from one election to the next; no limits on candidates' use of campaign funds for personal and non-campaign related expenses; and no limits on leadership PACs.

The only restrictions worth noting are those intended to inhibit public access to and understanding of the financial disclosure reports that candidates and committees are required to file periodically with the State board of elections. And, if perchance, you even rummage through these records, you'll quickly discover that it's virtually impossible to figure out, beyond names and addresses, who the State's political high rollers really are. Illinois has the distinction of being one of a handful of States that still does not require candidates to list the occupation of their contributors.

Illinois' campaign finance system makes the federal system look relatively tame, if not pristine. And that is why the Joyce Foundation is supporting a 2-year, $200,000 examination of this system by the State's leading public affairs magazine, Illinois Issues.

By this fall, the magazine's project staff will have put the finishing touches on a vast computerized database that will include all contributions of $25 or more made to legislative and statewide candidates since 1990. And as much occupational information about donors as can be independently obtained will also be incorporated into the database.

This reservoir of information will enable Illinois Issues to begin answering a question that should intrigue us all: Who is giving how much to whom for what purposes and with what effects? Detailed and customized profiles of individual candidates, interest groups, regions and districts will be developed. These reports, which will be made available to the States news media, are certain to shed light on the often murky financial behavior of candidates and donors alike. Citizens wishing direct access to the database will be able to get it at relatively low cost through an on-line information network.

In addition, the magazine has assembled a distinguished panel of citizens who over the next year and a half will examine various alternatives for reforming the State's campaign finance rules. This task force which is comprised of scholars, journalists, political practitioners, and civic leaders—including Senator PAUL SIMON, two university presidents and your own Cindy Canary—is expected to formulate and advance a set of reform recommendations late next year. But before doing so, the panel will consult with and collect testimony from a diverse cross-section of interested Illinoisans as well as carefully weigh the reform experiences of other jurisdictions across the country.

Money, Politics and the Public Voice. As angry as people are about the influence private money exerts on our politics, there is no groundswell of popular support for one reform approach or another. Indeed, there is no clear and loud public demand for change—at least not the kind of impatient outcry elected officials are inclined to take notice of and heed.

The foundation is convinced that reform will come more quickly if the public is brought into this debate in a much bigger way. But this is not small challenge. After all, just how do you clear a space at the policymaking table and pull up a chair for the American people? Well, that's the riddle the League of Women Voters education fund, in partnership with the Benton Foundation and the Hardwood group, have set out to answer over the next 2 years. And the Joyce Foundation is betting nearly half a million dollars that this unusual consortium will help solve that mystery.

About a year from now thousands of citizens, armed with background and discussion materials, will meet in neighborhoods and communities across America to learn about the campaign finance problem, to debate various reform options, and to clarify and make known to their elected Representatives the changes they want and are willing to support. These will not be undisciplined rap and complaint sessions but instead structured and expertly facilitated conversations that we hope and believe will yield the kind of reasoned and considered policy judgments that the political community will find difficult to dismiss.

It is our hope that other groups—like the American association of retired persons, the American association of community colleges and the university extension system—will eventually join the campaign, adding to the league's considerable organizational reach and enabling the project to host at least one forum in each of the country's 435 congressional districts.

To ensure that every step of this process is fully amplified, including the final results and public interactions between project participants and elected officials, the project is developing an aggressive public information and media outreach strategy. In addition, video, teleconferences, computers and other communication technologies will be used to connect the project's participants with each other, the news media and policymakers.

To date, the league-led project team has hired a staff of seasoned organizers, engaged the services of a professional communications firm, assembled an advisory panel of campaign finance experts and completed an exhaustive review of the vast literature on this subject. In the coming days, it will launch a series of focus groups in order to get a better fix on what people know and don't know about the campaign finance problem, how they talk about it, and how they would fix it, were it in their power to do so. These insights will aid in the development of the project's educational materials and a deliberative process designed to assist non-experts work through a complex policy problem like campaign finance.

The two projects I've briefly sketched out are ambitious, complex, expensive and labor intensive. If they are to succeed, the sponsors will need all the help they can garner. I know the ED fund and Illinois Issues would warmly welcome your participation and assistance, and I hope you will be able to offer some of each in the coming months.

Although this organization's plate is always full and this year is no exception, I would strongly encourage you to leave a little room for campaign finance reform. Your reputation for raising public consciousness on important issues, for educating and mobilizing citizens and for talking sense to lawmakers could make a huge difference in ending those campaign finance practices that often make the realization of the league's own policy goals needlessly difficult. So I hope you will join us; the water's fine and sure to get a lot warmer in the next year.

CONCLUSION

If I sound perturbed about the problem of money in politics, it's because I am. It's a problem, after all, that hits very close to home. This year the foundation will award nearly $6 million in grants to scores of organizations that are working tirelessly and in most cases with limited resources to repair and reserve the environment for future generations. These nonprofit organizations are in no position to compete financially with

those interests whose commitments to environmental protection often take a backseat to other economic considerations.

It's not a fair fight, when the congressional co-sponsors of amendments to the Safe Water Drinking Act get 60 times more money from businesses supporting the bill than from pro-environmental groups. And it's even less fair, when the co-sponsors of the private property owners bill of rights get 300 times more money from the bill's industry supporters than from pro-environmental groups. For this reason, in addition to all the others I've discussed, the foundation has a keen interest in cleaning up the campaign finance system. If the playing field were more level, I know that our conservation grantees and those working in other areas, like gun violence, could more than hold their own against the forces that oppose them. But as things now stand, every fight involving the good guys is uphill these days, and that's not right.

In conclusion, let me say this. The continuing debate on campaign finance reform is more than a squabble over how to revise the rules of the road. The debate is really about fundamentals and first principles; it is at bottom a struggle for the soul of the American political system. And that is a struggle which people who yearn for a more open, participatory and accountable politics—people like you and me—dare not take lightly, walk away from or lose.●

LIVESTOCK GRAZING ACT

● Mr. BAUCUS. Mr. President, I recently wrote a letter to the principal author of the Livestock Grazing Act outlining my concerns over this bill. I ask that this letter be printed in the RECORD.

The letter follows:

U.S. SENATE,
WASHINGTON, DC,
July 13, 1995.

Hon. PETE V. DOMENICI,
Hart Senate Office Building, Washington, DC.

DEAR PETE: The purpose of this letter is to let you know that I have added my name as a cosponsor of S. 852, the ''Livestock Grazing Act.'' Livestock operators are a vital part of Montana's economic base. It is my belief that S. 852, as originally drafted, offers the security that ranchers need to remain viable during these uncertain economic times.

The men and women who make their living off the land form the backbone of Montana. Without the rancher, many small communities would simply cease to exist. Absent ranching, the wide open spaces that provide elk winter range, wildlife corridors and critical wildlife habitat would be jeopardized by subdivision and development. In short, ranching is fundamental to preserving much of what makes Montana, ''the last, best place.''

As you move to Energy Committee markup of S. 852, I ask that you satisfy three specific concerns that are critical to my support of this legislation. These concerns are as follows:

1. PUBLIC PARTICIPATION

While the federal public lands are essential to many livestock operators, they are also deeply valued by the general public. Clean streams and healthy wildlife populations are just as important to Montana's sportsmen as predictability and security in the federal grazing rules are to the rancher. S. 852 must ensure that the public is granted full participation in the decision-making process affecting the use and management of these lands. If it does not, I will work to see that comprehensive public participation is assured before this legislation reaches a final vote on the Senate floor.

We must not lose sight of the fact that these are public lands; they belong to all of us. Ranchers, hunters, fishermen, birdwatchers, motorized recreationists and every other segment of the user public must be granted an equal seat at the table. Montana has already worked with the BLM to identify and select individuals interested in working together to improve our public range lands. Just last week, the BLM and the Governor of Montana jointly appointed 45 individuals to three advisory councils to begin this important work. S. 852 cannot deprive these Montanans of their fundamental democratic right of participation.

2. MORE ON-THE-GROUND WORK, LESS PAPERWORK

With over 30 percent of our land base in federal ownership, many Montanans interact on a daily basis with federal land managers. Perhaps our biggest criticism with all federal land management agencies is the ever-increasing allocation of limited resources to paperwork and bureaucracy rather than actual work in the field. The men and women who work for these agencies share this sentiment, and are frustrated by it.

Having spent a rainy day working with ranchers, conservationists and government personnel to rehabilitate a stream in the Blackfoot Valley, I have seen firsthand how much good can be done with a little start-up money and a few strong backs. As the budgets of our land management agencies continue to shrink, their resources must be directed to the field, rather than to increased bureaucracy and paperwork. S. 852 must de-emphasize paperwork and get the money to the allotment level where we can see tangible benefits come from our tax dollars.

3. STEWARDSHIP

Over 70 percent of BLM grazing lands in Montana are rated good to excellent, while less than 5 percent is in poor condition. These numbers demonstrate that our public lands grazers are largely good stewards of the land. Still, there is room for improvement. S. 852 must include a mechanism that gives permittees increased responsibility for bringing the public range into good to excellent condition. Such solutions cannot be rigidly imposed by those who are removed from the land and the unique challenges that exist on each allotment. We will see improvement only if these solutions come from the permittee. S. 852 should encourage innovative local stewardship.

In closing, I look forward to working with you on this very important issue to our states. It is my belief that the fundamental thrust of S. 852, coupled with these recommendations, will serve to promote responsible public lands stewardship while providing the necessary security that our ranchers need to remain viable in Montana and throughout the West.

With best personal regards, I am

Sincerely,

MAX BAUCUS.●

EDMUNDO GONZALES

Mr. BINGAMAN. Mr. President, I rise today to commend the U.S. Senate in its recent confirmation of Mr. Edmundo Gonzales to be Chief Financial Officer of the Department of Labor. I am confident that Mr. Gonzales will continue to be an asset to that department and to the United States.

Mr. Gonzales is originally from El Rito, a small town in northern New Mexico. He graduated from Arizona State University with an education major, and also received a MBA and Juris Doctor from the University of Colorado. He has worked as an attorney, and as a manager for U.S. West, Inc. In 1993, he came to the Labor Department, where he has worked on management standards and in the Office of the American Workplace.

Throughout his career, Mr. Gonzales has demonstrated a commitment to public service. While working for U.S. West, Inc., in addition to other duties, he served as an Executive on Loan to the Denver Public Schools, working on budgetary and strategic planning matters. He has served as President of the Hispanic Bar Association, and on a number of charitable and cultural boards.

We as a Nation are fortunate to have a person of Mr. Gonzales's caliber serving our Government. I wish him well in his new position.

AUTHORIZING TESTIMONY BY SENATE EMPLOYEES AND REPRESENTATION BY SENATE LEGAL COUNSEL

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 150, submitted earlier today by Senators DOLE and DASCHLE.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 150) to authorize testimony by Senate employees and representation by Senate legal counsel.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

Mr. HATCH. Mr. President, I ask unanimous consent the resolution be considered and agreed to, the preamble be agreed to, the motion to reconsider be laid on the table, and any statements relating to the resolution appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 150) was agreed to.

The preamble was agreed to.

The resolution with its preamble reads as follows:

S. RES. 150

Whereas, the plaintiffs in Barnstead Broadcasting corporation and BAF Enterprises, Inc. v. Offshore Broadcasting Corporation, Civ. No. 94–2167, a civil action pending in the United States District Court for the District of Columbia, are seeking the deposition testimony of Barbara Riehle and John Seggerman, Senate employees who work for Senator John Chafee;

Whereas, by the privileges of the Senate of the United States and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by administrative or judicial process, be taken from such control or possession but by permission of the Senate;

Whereas, when it appears that evidence under the control or in the possession of the Senate is needed for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges of the Senate;

Whereas, pursuant to sections 703(a) and 704(a)(2) of the Ethics in Government Act of 1978, 2 U.S.C. §§288b(a) and 288c(a)(2), the Senate may direct its counsel to represent employees of the Senate with respect to subpoenas or requests for testimony issued or made to them in their official capacities: Now, therefore, be it

Resolved, That Barbara Riehle and John Seggerman are authorized to provide deposition testimony in the case of Barnstead Broadcasting Corporation and BAF Enterprises, Inc. v. Offshore Broadcasting Corporation, except concerning matters for which a privilege should be asserted; and

SEC. 2. That the Senate Legal Counsel is authorized to represent Barbara Riehle and John Seggerman in connection with the deposition testimony authorized by this resolution.

MEASURE INDEFINITELY POSTPONED—SENATE CONCURRENT RESOLUTION 13

Mr. HATCH. Mr. President, I ask unanimous consent that Calendar No. 109, Senate Concurrent Resolution 13 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, it is so ordered.

CORRECTING THE ENROLLMENT OF S. 523

Mr. HATCH. Mr. President, I ask unanimous consent the Senate proceed to the immediate consideration of House Concurrent Resolution 82, just received from the House.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 82) directing the Secretary of the Senate to make technical corrections in the enrollment of S. 523.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. GLENN. Do we have these? Have these been cleared by the leadership?

Mr. HATCH. Yes.

Mr. GLENN. The minority leader cleared them also?

Mr. HATCH. Yes. That is my understanding.

Mr. GLENN. Fine.

Mr. HATCH. Mr. President, I ask unanimous consent the resolution be considered and agreed to, the motion to reconsider be laid on the table, and any statements relating to the resolution appear at the appropriate place in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 82) was considered and agreed to.

ORDERS FOR FRIDAY, JULY 14, 1995

Mr. HATCH. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in recess until the hour of 9 a.m. tomorrow, July 14, 1995, that following the prayer, the Journal of proceedings be deemed approved to date, the time for the two leaders be reserved for their use later in the day, the Senate then immediately resume consideration of S. 343, the regulatory reform bill, and Senator GLENN be recognized to speak for up to 45 minutes. Further, that at the conclusion of Senator GLENN's remarks, the Senate resume consideration of the Hutchison amendment, No. 1539.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. HATCH. For the information of all Senators, the Senate will resume consideration of the regulatory reform bill tomorrow and the pending Hutchison amendment. Senators should therefore expect votes tomorrow morning and throughout Friday's session of the Senate.

RECESS UNTIL 9 A.M. TOMORROW

Mr. HATCH. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 9:53 p.m., recessed until Friday, July 14, 1995, at 9 a.m.